

**WSR 17-20-022**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2017-05—Filed September 26,  
 2017, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-080.

Title of Rule and Other Identifying Information: Public records requests copy charges.

Hearing Location(s): On November 14, 2017, at 1:00 p.m., at the Office of the Insurance Commissioner (OIC), Training Room, TR 120, 5000 Capitol Boulevard S.E., Tumwater, WA 98504.

Date of Intended Adoption: November 17, 2017.

Submit Written Comments to: Stacy Middleton, P.O. Box 40258, Olympia, WA 98504, email rulescoordinator@oic.wa.gov, fax 360-586-3109, 360-725-9651, by November 13, 2017.

Assistance for Persons with Disabilities: Contact Lorie Villafores [Villaflores], phone 360-725-7087, fax 360-582-3109 [360-586-3109], TTY 360-586-0241, email rulescoordinator@oic.wa.gov, stacym@oic.wa.gov, by November 13, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends sections of WAC 284-03-035 to be consistent with the statutory amendments in EHB 1595, particularly those provisions concerning charging fees for copies of public records.

Reasons Supporting Proposal: The proposed rule amends sections of WAC 284-03-035 to be consistent with the statutory amendments in EHB 1595, particularly those provisions concerning charging fees for copies of public records

Statutory Authority for Adoption: RCW 48.02.060, 42.56.070.

Statute Being Implemented: RCW 42.56.070, 42.56.120.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Stacy Middleton, 302 Sid Snyder Avenue, Olympia, WA 98504-0260, 360-725-9651; Implementation: Kelly Cairns, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, 360-725-7003; and Enforcement: Toni Hood, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, 360-725-7050.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts "Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party" from regulations regarding the completion of a cost-benefit analysis (CBA). No provisions in this rule are deemed by OIC to be able to be violated by parties outside OIC, a government entity. Further, per copy charge provisions in this rule incorporate, by refer-

ence, state law which conforms to CBA exemption under RCW 34.05.328 (5)(b)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions, if necessary: This rule applies only to the procedures utilized within the agency to respond to and fulfill PDR requests. The changes made were largely directed by statute.

September 26, 2017

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-03-087, filed 1/15/12, effective 2/15/12)

**WAC 284-03-035 Agency rules for copy charges. (1) No fees for costs of inspection.** There is no fee for inspecting public records held by the OIC.

(2) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the office of the insurance commissioner declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

**(3) Standard ((photocopy)) charges for paper photocopies or electronically produced copies.** Unless otherwise requested, the OIC provides electronic copies of responsive documents in a portable document format (pdf). A requestor may obtain standard 8.5 x 11, black and white photocopies of responsive documents. ~~((The OIC will not charge a requestor for electronic copies, or for paper copies of fewer than one hundred pages. For copy requests of one hundred pages or more, the OIC will charge three dollars and fifty cents for the first one hundred and seventeen cents for each additional page. A statement of the factors and the manner used to determine this charge is available from the public records manager.~~

~~(3) Use of outside vendor.~~ The OIC may use an outside vendor for nonstandard copies or for voluminous requests if an outside vendor can make copies more quickly and less

expensively than the OIC. In the event an outside vendor is used, the requestor may be charged the actual costs billed by the vendor.

~~(4) **Costs of mailing.** The OIC may also charge the requestor for the actual costs of mailing, including the cost of the shipping container.)~~ Charges for electronic and paper copies shall be in accordance with the charges specified in RCW 42.56.120 (2)(b) and (c).

(4) **Waiver of charges.** The OIC will not charge a requestor for paper copies of fewer than three hundred pages or for electronic copies. This waiver does not apply to customized services charges as permitted by RCW 42.56.120(3) or charges for use of an outside vendor as provided in subsection (5) of this section.

(5) **Use of outside vendor.** With the consent of the requestor, the OIC may use an outside vendor for nonstandard copies or for voluminous requests if an outside vendor can make copies more quickly and/or less expensively than the charges specified in RCW 42.56.120. The OIC may also use an outside vendor if the OIC does not have the equipment to copy the requested records due to the format in which the records are saved (for example, if the records are saved on microfilm). In the event an outside vendor is used, the requestor may be charged the actual costs billed by the vendor.

## WSR 17-20-025

### PROPOSED RULES

#### SKAGIT VALLEY COLLEGE

[Filed September 26, 2017, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-085.

Title of Rule and Other Identifying Information: WAC 132D-276-090 Copying.

Hearing Location(s): On November 7, 2017, at 2:30 - 3:30 p.m., at Skagit Valley College, Administrative Annex, Board Room, 2405 East College Way, Mount Vernon, WA.

Date of Intended Adoption: December 5, 2017.

Submit Written Comments to: Lisa Radeleff, 2405 East College Way, Mount Vernon, WA 98273, email lisa.radeleff@skagit.edu, fax 360-416-7773, by October 24, 2017.

Assistance for Persons with Disabilities: Contact Lisa Radeleff, phone 360-416-7995, TTY 360-416-7718, email lisa.radeleff@skagit.edu, by November 1, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Skagit Valley College finds good cause that revised WAC 132D-276-090 is necessary for the following reasons. The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The college is not calculating actual costs for copying records because to do

so would be unduly burdensome. The proposal will revise WAC 132D-276-090.

Reasons Supporting Proposal: The Washington state legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The college is not calculating actual costs for copying records because to do so would be unduly burdensome.

Statutory Authority for Adoption: Chapter 42.56 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Dr. Thomas Keegan, President of Skagit Valley College, public.

Name of Agency Personnel Responsible for Drafting: Lisa Radeleff, 2405 East College Way, Mount Vernon, WA 98273, 360-416-7995.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

September 26, 2017

Lisa Raeleff

Executive Assistant

to the President and

Public Records Officer

AMENDATORY SECTION (Amending WSR 89-11-024, filed 5/11/89)

WAC 132D-276-090 ((Copying-)) **Charges for public records.** ((No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district official. All charges must be paid by money order, cashier's check, or cash in advance.)) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photo-

copies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

**WSR 17-20-033**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed September 28, 2017, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-167.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-493-0010 Working family support.

Hearing Location(s): On November 7, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 8, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 7, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by October 24, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-493-0010 Working family support, in order to change the effective end date of the program from June 30, 2017, to June 30, 2019, and to establish a program enrollment limit of ten thousand households.

Reasons Supporting Proposal: The amendments are required to meet proviso language in the 2017-2019 operating budget (SSB 5883).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anna Minor, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4894.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "(t)his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed amendments to this rule pertain to client eligibility.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.310 (4)(b).

Explanation of exemptions: These proposed rules do not have an impact on small businesses. The proposed amendment only affects DSHS clients by extending the program effective end date and by establishing a program eligibility household limit.

September 26, 2017

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-012, filed 3/6/17, effective 4/6/17)

**WAC 388-493-0010 Working family support. (1)**  
What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (~~((Department))~~) (department) and provides an additional monthly food benefit from May 2016 through June 30, (~~((2017))~~) 2019 to low income families who meet specific criteria. Continuance of the program beyond June 30, (~~((2017))~~) 2019 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home (~~((that))~~) who is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step-child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You (~~((are))~~) may be eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent((s)) work a minimum of thirty-five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state ((per)) as required under WAC 388-468-0005.

(4) How ((ean)) may I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long ((ean)) may I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed ((above)) in subsection (3) of this section and provide current proof that you, your spouse, or co-parent works a minimum of thirty-five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or ((WAC)) 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent((s)) no longer work a minimum of thirty-five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

(7) Enrollment in the working family support program is limited to ten thousand households per month.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

## WSR 17-20-034

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 28, 2017, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-064.

Title of Rule and Other Identifying Information: The department proposes amendments to WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses and 388-14A-4510 Who is subject to the DCS license suspension program?, in order to implement ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017. In addition to these proposed rules, the division of child support (DCS) adopted emergency rules under WSR 17-16-026, effective July 23, 2017.

Hearing Location(s): On November 7, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 8, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 7, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by October 24, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017, amended RCW 74.20A.320 to change the requirements for service of the notice of noncompliance and intent to suspend licenses, which is the first step in the process to suspend one or more licenses of a noncustodial parent who is not in compliance with a court order.

Reasons Supporting Proposal: In order to implement ESHB 1814, DCS must amend WAC 388-14A-4505 and must correct a cross-reference in WAC 388-14A-4510. DCS adopted emergency rules under WSR 17-16-026, effective July 23, 2017.

Statutory Authority for Adoption: Implementation of ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017, is authorized under RCW 26.23.030, 34.05.220 (1)(a), 34.05.322, 34.05.350 (1)(a) and (b), 74.04.-055, 74.08.090, 74.20.040(9), 74.20A.310, and 74.20A.328.

Statute Being Implemented: RCW 74.20A.320, as amended by ESHB 1814 (chapter 269, Laws of 2017).

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Implementation of state law change made by ESHB 1814 (chapter 269, Laws of 2017).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Koptur, DCS Rules Coordinator, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5065.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Although this rule meets the definition of a significant legislative rule under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because this rule adopts a state statute (RCW 34.05.328 (5)(b)(iii)) and the content of the rule is "explicitly and specifically dictated by statute" (RCW 34.05.328 (5)(b)(v)).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(iii) and (v).

Explanation of exemptions: This rule does not have an economic impact on any business.

September 26, 2017  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-029, filed 1/12/10, effective 2/12/10)

**WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses.** (1) Before certifying a non-custodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) The language of the underlying child support order determines the method by which DCS must serve the notice of noncompliance and intent to suspend licenses.

(3) If the support order establishing or modifying the child support obligation includes a statement required under RCW 26.23.050 that the NCP's privileges to obtain and maintain a license may not be renewed or may be suspended if the NCP is not in compliance with a support order, DCS may serve the notice by regular mail to the NCP's last known mailing address on file with the department.

(a) Notice by regular mail is deemed served three days from the date the notice was deposited with the United States Postal Service.

(b) DCS may choose to serve the notice by personal service.

(4) If the support order does not include a statement that the NCP's privileges to obtain and maintain a license may not be renewed or may be suspended if the NCP is not in compliance with a support order:

(a) DCS must serve the notice by certified mail, return receipt requested.

(b) If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

~~((3)) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.~~

~~(4))~~ (5) The notice must contain the information required by RCW 74.20A.320(2), including:

(a) The address and telephone number of DCS office that issued the notice;

(b) That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

(6) DCS is not required to include a copy of the NCP's child support order with the notice. Upon request from the NCP, DCS must provide a copy of the order or orders that serve as a basis for the notice of noncompliance.

AMENDATORY SECTION (Amending WSR 10-03-029, filed 1/12/10, effective 2/12/10)

**WAC 388-14A-4510 Who is subject to the DCS license suspension program?** (1) The division of child support (DCS) may serve a notice of noncompliance on a non-

custodial parent (NCP) who is not in compliance with a child support order.

(a) DCS may serve a notice of noncompliance on an NCP who meets the criteria of this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the objection period set out in WAC (~~((388-14A-4505 (4)(b)))~~) 388-14A-4505 (5)(b) until the NCP has been out of jail or prison for thirty days.

(b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the objection period in WAC (~~((388-14A-4505 (4)(b)))~~) 388-14A-4505 (5)(b) until the thirty days after the NCP's cash assistance grant is terminated.

(2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes no more than six months' worth of child support.

(3) Noncompliance with a child support order for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an arrearage or arrearage, totaling more than six months' worth of child support payments; or

(c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward current support and arrearages and the arrearages still amount to more than six months' worth of child support payments.

(4) There is no minimum dollar amount required for license suspension, as long as the arrearage owed by the NCP amount to more than six months' worth of support payments:

**Example 1.** Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is more than six months in arrears.

**Example 2.** Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrearage of over six hundred dollars. This NCP is more than six months in arrears.

**Example 3.** Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is more than six months in arrears.

**Example 4.** Assume a judgment of three thousand dollars is entered by the court: The order requires the NCP to pay fifty dollars per month toward the arrearage. The NCP has not made payments toward this obligation for eight months. This NCP is more than six months in arrears.

## WSR 17-20-035

### PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed September 28, 2017, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-01-047.

Title of Rule and Other Identifying Information: WAC 246-827-0200 Medical assistant-certified—Training and examination, the department of health (department) is proposing amendments to the examination requirements for medical assistant (MA)-certified to establish examination criteria to be used for approval rather than maintaining a list of department-recognized examinations in rule.

Hearing Location(s): On November 21, 2017, at 1:00 p.m., at the Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: November 28, 2017.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by November 21, 2017.

Assistance for Persons with Disabilities: Contact Davis Hylkema, phone 360-236-4663, fax 360-236-2901, TTY 360-833-6388 or 711, email [davis.hylkema@doh.wa.gov](mailto:davis.hylkema@doh.wa.gov), by November 13, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules remove the current list of four department-recognized exams, and propose that a department-approved MA-certification examination must be offered by a medical assistant program accredited by National Commission on Certifying Agencies (NCCA) and cover the clinical and administrative duties authorized under RCW 18.360.050(1). The list of currently recognized examinations will be moved from existing rule text and will be posted and updated on the department's MA web page.

Lastly, the proposal retains the requirement that the applicant must have passed one of the department-recognized exams within five years prior to submitting an application for the credential.

Reasons Supporting Proposal: The proposed rules are necessary to supplement the current department-approved examination options more efficiently for people applying for the MA-certified credential. The proposed changes must be in rule in order to legally defend decisions as to whether or not an applicant is qualified for the MA-certified credential.

Statutory Authority for Adoption: RCW 18.360.030 and 18.360.070.

Statute Being Implemented: RCW 18.360.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 360-833-6388 or 711, email [brett.cain@doh.wa.gov](mailto:brett.cain@doh.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule has no fiscal impact on MAs, facilities, or MA examination organizations. Therefore, this zero cost impact falls beneath the \$5,098 threshold calculated as follows: Payroll-based threshold for an average establishment in this NAICS code 561110 NAICS (Offices of Physicians) that would be affected by this proposed rule is \$5,098 ( $277,844 * 1,000 / 545$ ) \* (0.01) = \$5,098 where 277,844\*1,000 is Annual payroll and 545 is Total Establishments for this NAIC.

September 28, 2017  
John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

**WAC 246-827-0200 Medical assistant-certified—Training and examination.** ~~((Certification requirements—))~~  
An applicant((s)) for a medical assistant-certified credential must meet the following requirements:

(1) Successful completion of one of the following medical assistant training programs:

(a) Postsecondary school or college program accredited by the Accrediting Bureau of Health Education Schools (ABHES) or the Commission of Accreditation of Allied Health Education Programs (CAAHEP);

(b) Postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education, which includes a minimum of seven hundred twenty clock hours of training in medical assisting skills, including a clinical externship of no less than one hundred sixty hours;

(c) A registered apprenticeship program administered by a department of the state of Washington unless the secretary determines that the apprenticeship program training or experience is not substantially equivalent to the standards of this state. The apprenticeship program shall ensure a participant who successfully completes the program is eligible to take one or more examinations identified in subsection (2) of this section; or

(d) The secretary may approve an applicant who submits documentation that he or she completed postsecondary education with a minimum of seven hundred twenty clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than one hundred sixty hours.

(2) Pass ~~((one of the following examinations within five years prior to submission of an initial application for this credential:~~

~~(a) Certified medical assistant examination through the American Association of Medical Assistants (AAMA);~~

~~(b) Registered medical assistant certification examination through the American Medical Technologists (AMT);~~

~~(c) Clinical medical assistant certification examination through the National Healthcareer Association (NHA); or~~

~~(d) National certified medical assistant examination through the National Center for Competency Testing (NCCT))~~

a medical assistant certification examination approved by the secretary within five years of submitting an initial application. A medical assistant certification examination approved by the secretary means an examination that:

(a) Is offered by a medical assistant program that is accredited by the National Commission for Certifying Agencies (NCCA); and

(b) Covers the clinical and administrative duties under RCW 18.360.050(1).

**WSR 17-20-049**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed September 29, 2017, 9:46 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-360-990 Transient accommodations fee increase.

Hearing Location(s): On November 16, 2017, at 10:30 a.m., at the Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: November 20, 2017.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by November 16, 2017.

Assistance for Persons with Disabilities: Contact Chelsea Moore, phone 360-236-3370, TTY 360-833-6388 or 711, email [Chelsea.Moore@doh.wa.gov](mailto:Chelsea.Moore@doh.wa.gov), by November 13, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal increases fees for all transient accommodations by 29.3 percent. The department of health completed an economic impact analysis that examined the transient accommodation program's revenues and expenses to determine the amount of the increase.

Reasons Supporting Proposal: The program is not generating sufficient revenue to cover the cost of operating the program. The proposed fee increase is necessary to cover the cost of operating the program.

Statutory Authority for Adoption: RCW 70.62.220, 43.70.250, 43.70.110.

Statute Being Implemented: RCW 70.62.220, 43.70.250, 43.70.110.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Isreal [Israel] Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement:

Kimberly Moore, 243 Isreal [Israel] Road S.E., Tumwater, WA 98501, 360-236-3366.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

- Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

September 28, 2017  
Clark Halvorson  
Assistant Secretary

AMENDATORY SECTION (Amending WSR 06-21-108, filed 10/17/06, effective 11/17/06)

**WAC 246-360-990 Fees.** (1) ~~((The))~~ To apply for a transient accommodation initial license or to renew an annual license, an applicant or licensee ~~((or applicant))~~ must submit ~~((:~~

~~((a)))~~ an initial or annual license renewal fee according to the following schedule:

NUMBER OF LODGING UNITS	FEE
3 - 10	<del>\$(164.10))</del> <u>212.00</u>
11 - 49	<del>\$(326.30))</del> <u>422.00</u>
50 - over	<del>\$(657.00))</del> <u>849.00</u>

~~((b)-A))~~ (2) If the department does not receive the license renewal application and fee on or before the expiration date, a licensee must submit an additional late fee of ~~((fifty-four dollars and sixty cents, in addition to the full license renewal fee, if the full license renewal fee is not received by the department on the expiration date (see RCW 70.62.260);~~

~~((c) An additional))~~ seventy dollars.

(3) If the licensee notifies the department of a change in the number of lodging units or the name of the transient accommodation in accordance with WAC 246-360-020(9), the licensee must submit an amended license fee of ~~((fifty-four dollars and sixty cents for an amended license due to changing the number of lodging units or the name of the transient accommodation.~~

~~((2)))~~ seventy dollars.

(4) The department shall refund fees paid by the applicant for initial licensure as follows:

- (a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee.

- (b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

~~((e) No))~~ (5) The department will not refund fees paid by the applicant ~~((will be refunded))~~ if any of the following applies:

~~((i))~~ (a) More than one on-site visit for any purpose has been performed by the department;

~~((ii))~~ (b) One year has elapsed since an initial licensure application is received by the department, but no license is issued because the applicant failed to complete the requirements for licensure; or

~~((iii))~~ (c) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

**WSR 17-20-053**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed September 29, 2017, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-039.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-145, 181-79A-206, 181-79A-231, 181-79A-251, 181-79A-2510, 181-85-020, and 181-85-075 in response to legislation that was in effect immediately July 7, 2017. HB [E2SHB] 1341 removed the requirements for teacher and principal professional certification. The rule change covers licensure requirements for second tier, but voluntarily seeking second tier remains an option.

Hearing Location(s): November 16, 2017, at 8:30, at the Heathman Lodge, 7801 N.E. Greenwood, Vancouver, WA.

Date of Intended Adoption: November 16, 2017.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by November 9, 2017.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2017 legislature passed HB [E2SHB] 1341 amending statutes related to second tier licensing. The professional educator standards board (PESB) filed emergency rule change WSR 17-20-051 to address rule changes responsive to HB [E2SHB] 1341. This proposal mirrors the changes in the emergency filing.

Reasons Supporting Proposal: Statutory change.

Statutory Authority for Adoption: RCW 28A.410.220.

Statute Being Implemented: HB [E2SHB] 1341, 2017.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [PESB], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

A school district fiscal impact statement is not required under RCW 28A.305.135. The public may obtain a copy of the school district fiscal impact statement by contacting David Brenna, 600 Washington Street, Olympia, WA 9850 [98504], phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us.

A cost-benefit analysis is required under RCW 34.05-.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 9850 [98504], phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. [No information supplied by agency.]

A copy of the detailed cost calculations may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 9850 [98504], phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us.

September 29, 2017  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-02-027, filed 12/28/11, effective 1/28/12)

**WAC 181-79A-145 Levels and validity of certificates.**

Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has expired or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors and school psychologists no later than September 1, 2005.

(b) Until September 1, 2017, the first issue of a residency certificate for ((teachers,)) principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the principal, program administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250; provided, that residency ESA school social worker certificate holders have no residency renewal or professional certificate options and may apply for an initial ESA conversion or continuing ESA under requirements in place at time of application submission.

(c) Beginning September 1, 2017, the first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students, at which time their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must meet residency renewal requirements or earn a second-tier certificate for the role under WAC 181-79A-250. Provided, that residency ESA school social worker certificate holders have no residency renewal or professional certificate options and must apply for an initial ESA or continuing ESA certificate for the role under requirements in place at the time of application submission.

~~((c) For teachers, after September 1, 2011,))~~ (d) A first issue ((teacher)) residency teacher certificate remains undated until the teacher ((is eligible to register for the professional certificate assessment)) has two years of successful experience under WAC 181-79A-206, at which time the residency certificate is dated for ((three)) five years as verified by the certification office of the office of superintendent of public instruction((: Provided, That teachers who hold an undated initial residency certification and teach in nonpublic school settings as defined under WAC 181-79A-030 are considered to hold a valid certificate and may participate in the professional certificate requirements by submitting proof of experience under WAC 181-79A-206.

~~(d)~~). Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-251.

(e) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors and school psychologists beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language, culture, and oral tribal traditions certificates: The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

**AMENDATORY SECTION** (Amending WSR 12-11-100, filed 5/21/12, effective 6/21/12)

**WAC 181-79A-206 Academic and experience requirements for certification—Teachers.** Candidates for teachers' certificates shall complete the following requirements in addition to those set forth in WAC 181-79A-150.

(1) Initial/residency.

Candidates for the initial or residency certificate shall hold an approved baccalaureate degree from ~~((a-regionally))~~ an accredited college or university pursuant to WAC 181-79A-030(5).

(2) Continuing.

(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from ~~((a-regionally))~~ an accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon completion of the requirements for an endorsement in that subject area or specialization.

(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.

(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse

course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) Professional.

(a) Candidates for the professional certificate shall have successfully completed the external portfolio of evidence assessment ~~((as directed by RCW 28A.410.220(2)))~~ adopted by the professional educator standards board. The professional certificate requires successful demonstration of the three standards (effective teaching, professional development, and professional contributions) and twelve criteria, pursuant to WAC 181-79A-207.

(i) A candidate may submit a portfolio of evidence to the external assessment for evaluation ~~((as per RCW 28A.410.220(2)))~~ following two years of successful teaching in a state-approved public, private or state operated education program for children as defined in Title 28A RCW: Provided, the candidate was employed at least three-quarters time each year or a total of one and one-half full-time equivalent over a minimum of two years as defined in WAC 392-121-212. The portfolio assessment elements shall be determined by the professional educator standards board and include requirements for the candidates to prepare and submit a professional growth plan approved and supported by a professional growth team.

(ii) A professional growth plan identifying the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 is prepared by the candidate for a professional certificate, in collaboration with members of the professional growth team. The candidate will identify a professional growth team as defined in WAC 181-79A-030~~((+))~~ (14).

(iii) Teacher professional certificate portfolio evidence of assessment pilot participants who have not attended a program but received a "met criteria" on all entries submitted to the pilot assessment would receive the professional certificate and not be required to attend a program.

(b) Provided, individuals who hold a teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirements of the professional certificate, in place of the requirements in (a) of this subsection.

(c) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates who have successfully completed the requirements for the professional certificate prior to the expiration of their residency certificate which would subject them to reinstatement according to WAC 181-79A-251 (1)(a)(iii) but failed to apply for the certificate may apply for the professional certificate. ~~((Individuals who are subject to reinstatement according to WAC 181-79A-251 (1)(a)(iii) who do not~~

~~meet requirements for the professional certificate prior to the expiration of the residency certificate may apply for the professional certificate following not less than five years from the final residency expiration.)~~

AMENDATORY SECTION (Amending WSR 17-08-037, filed 3/29/17, effective 4/29/17)

**WAC 181-79A-231 Limited certificates.** Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with

WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned

grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet district needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators who hold or have held a regular state of Washington certificates: Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for the roles of principal, teacher, school counselor, school psychologist, school speech language pathologist or audiologist and school social worker may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold a bachelor's degree and are enrolled in a state-approved preparation program for the role, if it is a role for which state-approved programs are required, in accordance with Washington requirements for certification and shall be the best qualified of the candidates for the position as verified by the employing school district: Provided, That a qualified person who holds regular certification for the requested role is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided

further, That an emergency certificate issued with a special education endorsement may be reissued once for one school year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program: Provided further, That a candidate for emergency certification as a principal holds a master's degree and has substantially completed the state-approved preparation program: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in a state-approved school psychologist preparation program, shall have completed all course work for the required master's degree, and shall be participating in the required internship: Provided further, That a candidate for emergency certification as a school speech language pathologist or audiologist shall be enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification, and may be renewed one time if the candidate has substantially completed the required master's degree program.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing ~~((or residency))~~ certificate has expired according to WAC 181-85-040 ~~((or 181-79A-251))~~ may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete ~~((the external assessment established by the professional educator standards board))~~ requirements for continuing certificate reinstatement within two years of the date the holder was issued the transitional certificate ~~((in order to continue to be employed: Provided, one year has elapsed since the final renewal expired and the teacher registers and passes the professional certificate assessment within the two years under WAC 181-79A-251))~~. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

~~((8) Provisional alternative administrative certificate.~~

~~(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.~~

~~(b) The certificate is valid for one year from date of issue.~~

~~(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.)~~

**AMENDATORY SECTION** (Amending WSR 16-24-029, filed 11/30/16, effective 12/31/16)

**WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement.** (1) Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, residency certificates have the following options for renewal ~~((past the first three year certificate))~~:

(i) ~~((Individuals who have attempted and failed the professional certificate assessment are eligible for a two year renewal;~~

~~((ii)))~~ One hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four

annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency teacher renewal certificate or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers.

For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual per this chapter.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency teacher renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency teacher renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.-2212.

Continuing education for teachers at the elementary and secondary levels in science, technology, engineering, and mathematics (STEM) related subjects must include a specific

focus on the integration of STEM instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours with an emphasis on the integration of STEM. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(ii) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal.

(iii) Individuals who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification(§).

((iii)) (iv) Individuals whose three- or five-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards: Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment.

(b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year residency teacher renewal (~~(on residency)~~) certificate(§) expires, teachers have three renewal options:

(i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(ii) Individuals who were unemployed or employed less than full-time as a teacher during the first two-year renewal may permit their certificate to lapse. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment;

(iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board

for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

~~((c) Individuals who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than one year following the final residency expiration: Provided, That the teacher registers and passes the Washington uniform assessment portfolio as per this section, WAC 181-79A-206 or assessment for National Board for Professional Teaching Standards within two years of issuance of the transitional certificate.~~

~~(d) Individuals who hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.)~~

(2) Teacher professional certificate.

~~(a) ((A valid)) Individuals who hold a professional teacher certificate ((issued prior to September 1, 2014,)) may ((be)) have that certificate renewed for additional five-year periods by the completion of one hundred ((fifty)) continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans annually during the period in which the certificate is valid as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.~~

~~((b) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal.~~

~~(c) Renewal of the professional certificate.~~

~~((i)) Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.~~

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(b) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

~~((ii)) (c) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

~~((iii))~~ (d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.

~~((iv))~~ (e) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~((v))~~ (f) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((vi))~~ Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this section. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

~~((vii))~~ (g) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((viii))~~ The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

~~((ix))~~ (h) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

~~((d))~~ An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(e) Individuals not in the role of a teacher in a public school or approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

(i) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-79A-207; or

(ii) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

(iii) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal) This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

AMENDATORY SECTION (Amending WSR 16-07-103, filed 3/18/16, effective 4/18/16)

**WAC 181-79A-2510 Principal and program administrator residency and professional certification—Renewal and reinstatement.** (1) Principals/program administrators who hold or have held residency certificates may ~~((renew))~~ have their residency ~~((certificate in one of the following ways:-~~

~~((a))~~ Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional educator standards board approved professional certificate program pursuant to WAC 181-78A-507 and 181-79A-145 may have the certificate renewed for one additional two-year period upon verification by the professional certificate pro-

gram administrator that the candidate is enrolled in a state approved professional certificate program.

(b) Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency)) certificates renewed by completing one hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, within the previous five years from the date of the five-year residency administrator renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

(a) Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency administrator renewal certificate; or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency administrator renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year residency administrator renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency administrator renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.2212.

(b) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a principal or program administrator residency certificate that expires prior to July 1, 2019.

(2) Professional certificate. Individuals who hold a professional certificate may ((be)) have that certificate renewed for additional five-year periods ((for individuals in the role as a principal, assistant principal, or program administrator in a public school or approved private school)) by completion of one hundred continuing education credit hours as defined in chapter 181-85 WAC or four professional growth plans developed annually since the certificate was issued, in collaboration with the professional growth team as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

(a) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(b) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning

July 1, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of ~~((thirty))~~ twenty-five hours of continuing education credit hours.

(c) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ~~((defined in WAC 181-78A-540(1)))~~.

(d) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Certificates with a renewal date of June 30, 2019, and beyond for all principals and program administrators must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~((c) ((Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application: Provided, That this section is no longer in effect after June 30, 2020.~~

~~((f)) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~((g) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one-time. This section is no longer in effect after June 30, 2020.))~~

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

**WAC 181-79A-2511 School counselor residency and professional certification—Renewal and reinstatement.**

(1) School counselors may renew their residency certificate in one of the following ways:

(a) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the residency

certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(b) An individual school counselor who completes or intends to complete a National Board of Professional Teaching Standards (NBPTS) school counselor assessment but does not earn National Board Certification may use that completed assessment, or an affidavit of intention to complete, in order to renew the residency certificate one time for two years.

(c) Individuals who hold ~~((, or have held,))~~ a residency certificate ~~((who are not in the role of school counselor))~~ may have their residency certificates renewed for an additional five-year period by the completion of ~~((fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of))~~ one hundred ~~((fifty))~~ continuing education hours as defined in chapter 181-85 WAC, directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issuance of the residency certificate, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.-2212.

(d) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a school counselor residency certificate that expires prior to July 1, 2019.

(e) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(2) Professional.

~~((a) For certificates issued under rules in effect prior to September 1, 2014, a valid))~~ Individuals who hold a professional certificate may ((be) have that professional certificate renewed for additional five-year periods by:

~~((i)) (a) Completion of one hundred ((fifty)) continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270(4); or~~

~~((ii)) (b) Completion of four professional growth plans that are developed annually since the certificate was issued.~~ Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school counselor by completion of four professional growth plans developed annually since the certificate was issued.~~

~~(e) Renewal of the professional certificate.~~

~~(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~((ii)) (c) Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.~~

(d) The professional growth plans must document formalized learning opportunities and professional development

activities that relate to the standards and "career level" benchmarks ((defined in WAC 181-78A-540(2)-

~~((iii)) as published by the professional educator standards board for administrators and educational staff associates.~~

(e) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((iv) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this chapter. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.~~

~~((v)) (f) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.~~

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

(g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((vi) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.~~

~~((vii) After)) (h) Beginning July 1, 2015, professional certificates for school counselors, in addition to the requirements~~

in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

~~((d) Individuals not in the role of a school counselor may have their professional certificate renewed for an additional five-year period by:~~

~~(i) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

~~(ii) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance based standards as defined in WAC 181-78A-540(2); or~~

~~(iii) Completion of four annual professional growth plans developed since the certificate was issued.))~~

AMENDATORY SECTION (Amending WSR 15-20-059, filed 10/1/15, effective 11/1/15)

**WAC 181-79A-2512 School psychologist residency and professional certification—Renewal and reinstatement.** (1) School psychologists may renew their residency certificate in one of the following ways:

(a) An individual school psychologist who is applying for the National Certificate for School Psychologist (NCSP) may apply for a one-time two-year renewal with verification of NCSP submission: Provided, That individuals with expiring certificates in 2014, 2015, 2016, or 2017 may apply for a second two-year renewal with verification of NCSP submission.

(b) An individual who holds ~~((or has held,))~~ a residency certificate ~~((who is not in the role of school psychologist))~~ may have their residency certificate renewed for an additional five-year period by the completion of ~~((fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of))~~ one hundred ~~((fifty))~~ continuing education hours ~~((;))~~ as defined in chapter 181-85 WAC directly related to the current performance-based standards as defined in WAC 181-78A-270(5) from ~~((a regionally))~~ an accredited institution of higher education ~~((taken since the issuance of the residency certificate))~~ or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(5) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans

during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal. Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.-2212.

(c) School psychologists with residency certificates dated to expire June 30, 2013, 2014, 2015, 2016, or 2017, may apply until June 30, 2016, for a two-year extension. These individuals may apply for a second two-year extension until June 30, ~~((2018))~~ 2020.

(d) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(2) Professional. ~~((a) For certificates issued under rules in effect prior to September 1, 2014, a valid))~~ Individuals who hold a professional certificate may ~~((be))~~ have that certificate renewed for additional five-year periods by:

~~((+))~~ (a) Completion of one hundred ~~((fifty))~~ continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

~~((i))~~ (b) Completion of four professional growth plans that are developed annually since the certificate was issued. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b))~~ Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school psychologist by completion of four professional growth plans developed annually since the certificate was issued.

~~(e) Renewal of the professional certificate.~~

~~(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~((ii))~~ (c) Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ((defined in WAC 181-78A-540(2))) as published by the professional educator standards board for administrators and educational staff associates.

~~((iii))~~ (e) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid nationally certified school psychologist certificate issued by the National Association of School Psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the nationally certified school psychologist certificate, whichever is greater. Such renewal is only available one time during the validity period of the nationally certified school psychologist (NCSP) certificate and cannot be the same nationally certified school psychologist certificate used to obtain the professional certificate.

(f) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

~~((iv))~~ Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit

hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

~~(v))~~ (g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((vi))~~ The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

~~(vii) After~~ (h) Beginning July 1, 2015, professional certificates for school psychologists, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

~~((d))~~ Individuals not in the role of a school psychologist may have their professional certificate renewed for an additional five-year period by:

~~(i) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

~~(ii) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or~~

~~(iii) Completion of four annual professional growth plans developed since the certificate was issued.)~~

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-85-020 Effective date and applicable certificates.** The provisions of this chapter shall apply to the following certificates issued on or after August 31, 1987:

(1) ~~((Continuing))~~ Residency certificates as provided in chapter 181-79A WAC.

(2) Continuing certificates as provided in chapter 181-79A WAC.

(3) Standard certificates as provided under previous standards of the professional educator standards board.

~~((3))~~ (4) Professional certificates as provided in chapter 181-79A WAC.

~~((4))~~ (5) Provided, That applicants who have completed all requirements for a continuing or standard certifi-

ates prior to August 31, 1987, and who apply for such certificate prior to July 1, 1988, and applicants who have completed all requirements for a continuing or standard certificate except one of the three-years experience requirement prior to August 31, 1987, and who completes such requirement and applies prior to August 31, 1988, shall be exempt from the continuing education requirements of this chapter.

**AMENDATORY SECTION** (Amending WSR 16-23-036, filed 11/8/16, effective 12/9/16)

**WAC 181-85-075 Continuing education requirement.** Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred (~~(fifty)~~) continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred (~~(fifty)~~) hours to meet the requirements of subsection (1) of this section. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, (~~(WAC 181-78A-540(1))~~) and as published by the professional educator standards board for administrators (~~(, or WAC 181-78A-540(2) for)~~) and educational staff associates. For educators holding multiple certificates in chapter 181-85 WAC or WAC 181-79A-251, a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. Until June 30, 2018, each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of (~~(thirty)~~) twenty-five continuing education credit hours.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists in lieu of

the completion of the continuing education credit hours required by this chapter.

(5) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and/or engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan with an emphasis on the integration of science, technology, engineering, and mathematics. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(6) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers, principals, program administrators, and superintendents with continuing certificates must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered to be met by holders of a valid National Board Certificate issued by the NBPTS.

## WSR 17-20-061

### PROPOSED RULES

#### BOARD OF

#### PILOTAGE COMMISSIONERS

[Filed October 2, 2017, 8:37 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05-330(1).

Title of Rule and Other Identifying Information: WAC 363-116-300, Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): On November 9, 2017, at 10:00 a.m., at 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121.

Date of Intended Adoption: November 9, 2017.

Submit Written Comments to: Sheri J. Tonn, Chair, 2901 Third Avenue, Suite 500, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by November 2, 2017.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by November 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is [to] update the effective year of the tariff only. The tariff rates and language will remain as is.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: RCW 88.16.035.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire December 31, 2017. New rates must be set accordingly. In complying with the legislative intent through the passage of ESB 5096, which freezes the Puget Sound pilotage district tariff for two years, the board is leaving the tariff as is and setting the 2018 date parameters only.

Name of Proponent: Puget Sound pilots, private.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 Third Avenue, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, 206-515-3904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 2, 2017

Jaimie C. Bever

Executive Director (Interim)

AMENDATORY SECTION (Amending WSR 16-23-162, filed 11/23/16, effective 1/1/17)

**WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.** Effective 0001 hours January 1, (~~2017~~) 2018, through 2400 hours December 31, (~~2017~~) 2018.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Pilot boat fee:	\$348.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$359.00
Radio Direction Finder Calibration	\$359.00
Launching Vessels	\$540.00
Trial Trips, 6 hours or less (minimum \$1,014.00)	\$169.00 per hour
Trial Trips, over 6 hours (two pilots)	\$338.00 per hour
Shilshole Bay - Salmon Bay	\$211.00
Salmon Bay - Lake Union	\$164.00
Lake Union - Lake Washington (plus LOA zone from Webster Point)	\$211.00
Cancellation Charge	LOA Zone I
Cancellation Charge - Port Angeles:	LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

**Waterway and Bridge Charges:**

*Ships up to 90' beam:*

A charge of \$266.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$127.00 per bridge.

*Ships 90' beam and/or over:*

A charge of \$361.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$251.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

*Two or three pilots required:*

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

**Docking Delay After Anchoring:**

Applicable harbor shift rate to apply, plus \$274.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof.

**Sailing Delay:**

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

**Slowdown:**

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$274.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

**Delayed Arrival - Port Angeles:**

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$274.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

**Tonnage Charges:**

*0 to 20,000 gross tons:*

Additional charge to LOA zone mileage of \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

*20,000 to 50,000 gross tons:*

Additional charge to LOA zone mileage of \$0.0814 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

*50,000 gross tons and up:*

In excess of 50,000 gross tons, the charge shall be \$0.0974 per gross ton.

Notwithstanding the above tonnage charges, there shall be a minimum tonnage charge of \$500.00 applied to:

- (1) All LOA Zone I assignments other than assignments of an additional pilot(s) on ship movements involving more than one pilot jointly piloting the vessel; and
- (2) All LOA Zone II and greater assignments.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

**Transportation to Vessels on Puget Sound:**

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

**Payment Terms and Delinquent Payment Charge:**  
1 1/2% per month after 30 days from first billing.

**Nonuse of Pilots:**

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

**British Columbia Direct Transit Charge:**

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

<b>Direct Transit Charge</b>	\$2,107.00
<b>Sailing Delay Charge.</b> Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	\$283.00 per hour

**Slow Down Charge.** Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities. \$283.00 per hour

**Cancellation Charge.** Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses. \$525.00

**Transportation Charge Vancouver Area.** Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. \$514.00

**Transportation Charge Outports.** Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. \$649.00

**Training Surcharge:**

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

**LOA Rate Schedule:**

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
UP to 449	263	381	650	968	1,304	1,692
450 - 459	274	388	653	983	1,325	1,700
460 - 469	276	392	665	999	1,343	1,708
470 - 479	285	404	672	1,020	1,347	1,711
480 - 489	294	410	675	1,038	1,355	1,719
490 - 499	298	416	685	1,057	1,371	1,728
500 - 509	313	423	695	1,068	1,383	1,738
510 - 519	315	431	702	1,085	1,398	1,744
520 - 529	319	447	712	1,090	1,410	1,758
530 - 539	329	452	721	1,102	1,432	1,778
540 - 549	334	458	738	1,114	1,454	1,795
550 - 559	341	474	742	1,130	1,466	1,812
560 - 569	353	493	757	1,141	1,479	1,828

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
570 - 579	361	496	760	1,146	1,495	1,841
580 - 589	376	505	778	1,154	1,503	1,859
590 - 599	393	516	782	1,160	1,526	1,882
600 - 609	408	532	794	1,164	1,544	1,890
610 - 619	431	537	807	1,169	1,559	1,907
620 - 629	447	543	814	1,183	1,577	1,929
630 - 639	468	552	824	1,186	1,591	1,946
640 - 649	486	566	832	1,188	1,604	1,960
650 - 659	520	575	847	1,197	1,624	1,981
660 - 669	530	582	854	1,205	1,642	1,996
670 - 679	550	597	863	1,226	1,660	2,009
680 - 689	557	607	874	1,237	1,674	2,028
690 - 699	574	616	888	1,258	1,692	2,071
700 - 719	599	637	904	1,275	1,725	2,093
720 - 739	634	653	927	1,292	1,758	2,128
740 - 759	659	685	945	1,304	1,795	2,167
760 - 779	685	707	968	1,325	1,828	2,194
780 - 799	719	738	983	1,343	1,859	2,234
800 - 819	748	760	1,002	1,350	1,890	2,268
820 - 839	771	788	1,025	1,371	1,929	2,293
840 - 859	804	820	1,046	1,387	1,958	2,333
860 - 879	834	847	1,064	1,423	1,996	2,367
880 - 899	863	871	1,085	1,455	2,028	2,402
900 - 919	889	900	1,103	1,494	2,071	2,434
920 - 939	917	927	1,130	1,526	2,091	2,468
940 - 959	950	952	1,147	1,559	2,128	2,498
960 - 979	971	980	1,167	1,591	2,167	2,535
980 - 999	1,003	1,002	1,187	1,624	2,194	2,568
1000 - 1019	1,065	1,067	1,240	1,710	2,299	2,678
1020 - 1039	1,094	1,098	1,279	1,758	2,368	2,757
1040 - 1059	1,127	1,125	1,316	1,812	2,435	2,838
1060 - 1079	1,161	1,165	1,355	1,866	2,511	2,922
1080 - 1099	1,196	1,197	1,394	1,920	2,585	3,011
1100 - 1119	1,230	1,234	1,437	1,980	2,662	3,102
1120 - 1139	1,268	1,274	1,481	2,037	2,742	3,194
1140 - 1159	1,304	1,310	1,523	2,098	2,825	3,291
1160 - 1179	1,343	1,347	1,571	2,161	2,909	3,388
1180 - 1199	1,384	1,388	1,616	2,226	2,997	3,491
1200 - 1219	1,427	1,430	1,664	2,293	3,087	3,593
1220 - 1239	1,467	1,473	1,713	2,362	3,177	3,701

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
1240 - 1259	1,511	1,516	1,763	2,432	3,274	3,811
1260 - 1279	1,555	1,561	1,817	2,505	3,373	3,925
1280 - 1299	1,602	1,609	1,872	2,580	3,471	4,044
1300 - 1319	1,651	1,655	1,927	2,657	3,576	4,164
1320 - 1339	1,701	1,705	1,986	2,736	3,682	4,290
1340 - 1359	1,749	1,756	2,045	2,817	3,792	4,419
1360 - 1379	1,803	1,807	2,106	2,903	3,905	4,549
1380 - 1399	1,855	1,861	2,171	2,989	4,022	4,687
1400 - 1419	1,912	1,918	2,233	3,077	4,142	4,826
1420 - 1439	1,968	1,976	2,301	3,171	4,268	4,971
1440 - 1459	2,029	2,035	2,371	3,265	4,395	5,120
1460 - 1479	2,086	2,094	2,440	3,362	4,527	5,270
1480 - 1499	2,150	2,157	2,512	3,462	4,661	5,429
1500 - Over	2,215	2,222	2,587	3,568	4,800	5,591

**WSR 17-20-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 2, 2017, 3:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-044.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-1000 WorkFirst—Vocational education, to extend the vocational education lifetime limit from twelve to twenty-four months.

Hearing Location(s): On November 7, 2017, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 8, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 7, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by October 24, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current language in WAC 388-310-1000 WorkFirst—Vocational education,

reflects vocational education as an approvable WorkFirst activity for up to twelve months. The department is amending WAC 388-310-1000 to extend the vocational education lifetime limit to twenty-four months.

Reasons Supporting Proposal: 2SSB 5347 amended RCW 74.08A.250 to allow the twelve-month vocational education training limit to increase to twenty-four months subject to funding appropriated specifically for that purpose. The state fiscal year 2017-19 budget funds the extension.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, 74.04.057, 74.08A.250, 45 C.F.R. 260, 42 U.S.C. 601.

Statute Being Implemented: RCW 74.08A.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Angela Aikins, P.O. Box 45470, Olympia, WA 98504, 360-725-4784.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(iii) which states in-part, "This section does not apply to ... rules adopting or incorporating by reference without material change federal statutes [statutes] or regulations, Washington state statutes [statutes] ...."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

September 28, 2017  
Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-14-019, filed 6/22/09, effective 7/23/09)

**WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?**

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a ~~((baccalaureate))~~ bachelor's or advanced degree unless otherwise indicated ~~((below))~~ in subsection (4) of this section, ~~((and is))~~ offered by an accredited:

- (a) Public and private technical college or school;
- (b) Community college;
- (c) Tribal college; or
- (d) ~~((For))~~ Community based organizations for customized job skills training ~~((formerly known as preemployment training), community based organizations))~~ programs only.

(2) Vocational education may include one or more of the following:

- (a) Customized job skills training;
- (b) High-wage/high-demand training;
- (c) Approved homework and study activities associated with the educational activity; ~~((and/or))~~
- (d) Remedial/developmental education, prerequisites, basic education ~~((and/or))~~ or English as a second language training deemed a necessary part of the vocational education program.

**(3) What is customized job skills training?**

Customized job skills training helps you learn skills ~~((you need))~~ needed for an identified entry-level job that pays more than average entry-level wages~~((:~~

~~((a Customized job skills training))~~, and is an acceptable WorkFirst activity when an employer or industry commits to hiring or giving hiring preference ~~((to WorkFirst participants who successfully complete customized job skills training))~~ upon completion.

~~((b) You can find out about current customized job skills training opportunities by asking your employment services counselor, your case manager or staff at your local community and technical college.))~~

**(4) What is high-wage/high-demand training?**

(a) There are two types of high-wage/high-demand ~~((HWHHD))~~ full-time training options for ~~((TANF))~~ temporary assistance for needy families (TANF) recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care, or other professional-technical programs ~~((: This option allows you))~~ that allows recipients to start and finish a one-year or shorter state, community, or technical college training program in ~~((the information technology, health care))~~ these fields or other professional-technical programs that meet high-wage/high-demand criteria~~((: and/or))~~.

(ii) Certificate/degree completion~~((: This option allows you))~~ programs that allow recipients to finish ~~((up))~~ the last

year of any certificate or degree program, not to exceed a ~~((baccalaureate))~~ bachelor's degree, in a high-wage/high-demand field on an exception basis. ~~((The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by))~~ Employment security department bases the high-wage/high-demand criteria on median income and high-demand occupations with the local labor market.

(b) ~~((For both types of HWHHD training, the training can be approved one time only (barring an approved exception to policy)))~~ The department may approve high-wage/high-demand training once in a lifetime without an approved exception to policy.

(c) To qualify for ~~((HWHHD))~~ high-wage/high-demand training, you must also:

- (i) Meet all of the prerequisites ~~((for the course));~~
- (ii) Be able to obtain the certificate or degree within twelve calendar months;
- (iii) Participate full time in the training program and make satisfactory progress;
- (iv) Work with ~~((WorkFirst staff))~~ the employment security department during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

**(5) When ~~((can))~~ may vocational education be included in my individual responsibility plan?**

~~((We))~~ The department may ~~((add))~~ include vocational education ~~((to))~~ in your individual responsibility plan for up to twelve months if:

- (a) Your comprehensive evaluation shows that you:
  - (i) Need this education to become employed or get a better job; and ~~((you))~~
  - (ii) Are able to participate full time in vocational education or combine vocational education with any approved WorkFirst work activity~~((:or))~~.

(b) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand program; ~~((or))~~

(c) You have limited English proficiency and ~~((you))~~ lack job skills that are in demand for entry-level jobs in your area~~((:))~~, and the vocational education program is the only way that you can acquire these skills (because there is no available work experience, community service or on-the-job training that can teach you these skills); or

(d) You ~~((are in the pregnancy to employment pathway))~~ meet the requirements in WAC 388-310-1450 and your comprehensive evaluation shows vocational education would help you find and keep employment. ~~((See WAC 388-310-1450.))~~

**(6) ~~((Can))~~ May I get help with paying the costs of vocational education?**

WorkFirst may pay for the costs of ~~((your))~~ vocational education, such as tuition or books, ~~((for))~~ up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program~~((: See chapter 388-290 [170-290] WAC for the working connections child care~~

program rules.)) if you meet criteria in chapter 388-290 WAC.

**(7) May the department include vocational education in my individual responsibility plan longer than twelve months?**

The department may increase the twelve-month limit for vocational education training to twenty-four months subject to funding appropriated specifically for this purpose.

**WSR 17-20-074  
PROPOSED RULES  
PARKS AND RECREATION  
COMMISSION**

[Filed October 3, 2017, 6:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-006 [17-17-006]; or

Expedited Rule Making—Proposed notice was filed as WSR 17-17-006.

Title of Rule and Other Identifying Information: At the commission meeting on July 12, 2017, the Washington state parks and recreation commission adopted an emergency rule - WAC 352-40-140 [352-40-135] Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule, to align with two options provided the agency as part of EHB 1595. With the passage of the emergency rule, the agency elected to adopt the second option of the house bill - adopting the "default" fee schedule since the agency does not have the ability to undertake a process of calculating the "actual costs" of producing records.

Hearing Location(s): On November 16, 2017, at 9:00 a.m., at 2201 Westhaven Drive, Westport, WA 98595.

Date of Intended Adoption: November 16, 2017.

Submit Written Comments to: Brian Thrasher, 1111 Israel Road S.W., Tumwater, WA 98501, email Brian.Thasher@parks.wa.gov [Brian.Thrasher@parks.wa.gov], by November 3, 2017.

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, email Becki.Ellison@parks.wa.gov, by November 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule-making action is to adopt the emergency rule as permanent so the agency can continue using the statutory fee schedule.

Reasons Supporting Proposal: To align with most appropriate of the options provided in EHB 1595 as it relates to charging for costs of providing public records.

Statutory Authority for Adoption: RCW 42.56.120 Charges for copying.

Statute Being Implemented: WAC 352-40-140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Thrasher, 1111 Israel Road S.W., Tumwater, WA 98501, 360-902-8514.

A school district fiscal impact statement is not required under RCW 28A.305.135.

October 2, 2017  
Valeria Evans  
Management Analyst

**NEW SECTION**

**WAC 352-40-135 Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule.** (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Washington state parks and recreation commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington state parks and recreation commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

**WSR 17-20-078  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES  
(Board of Boiler Rules)  
[Filed October 3, 2017, 11:14 a.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-134.

Title of Rule and Other Identifying Information: Amendments to the boiler rules, chapter 296-104 WAC, Board of boiler rules—Substantive.

Hearing Location(s): On November 15, 2017, at 10:00 a.m., at the Department of Labor and Industries (L&I), 950 Broadway, Suite 200, Tacoma, WA 98402-4453. For directions to the L&I office <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/tacoma.asp>.

Date of Intended Adoption: December 19, 2017.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m. on November 15, 2017.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by November 1, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules and L&I's boiler program is proposing amendments to sections in chapter 296-104 WAC, Board of boiler rules—Substantive, to update and clarify the rules and make

technical changes. The boiler rules are reviewed on a regular basis to ensure the rules are consistent with national boiler and unfired pressure vessel safety standards and industry practice, for rule clarity, housekeeping, etc. Proposed amendments to this chapter will:

- Modify the installation/reinstallation permit requirements. For example:
  - Make the "installer" of a boiler and pressure vessel responsible for permit requirements, permit fees, and civil penalties;
  - Eliminate the permit exemption for owner/user inspection agencies and Washington state specials to require permits, permit fees and civil penalties;
  - Create a new definition for "installer" to clarify the entity or individual responsible for permit requirements; and
  - Establish notification requirements for filing permits and emergency installations.
- Modify the definitions to adopt procedures for removing condemned vessels permanently from service;
- Modify the rules for in-service inspection and nonnuclear repairs and alterations of boilers and unfired pressure vessels to automatically adopt the current edition of the National Board Inspection Code (NBIC);
- Create new definitions to define the usage status of a vessel, such as active, inactive, out-of-service, and scrapped; and
- Modify the board of boiler rules meeting schedule to quarterly, as opposed to February, May, September, and November of each year.

**Reasons Supporting Proposal:** This rule making is needed to update and clarify the rules, and ensure the rules are consistent with national safety standards and industry practice for the proper construction, installation, inspection, operation, maintenance, alterations, and repairs of boilers and unfired pressure vessels to protect public safety.

For more information on this rule making, visit the L&I web site at <http://www.lni.wa.gov/TradesLicensing/Boilers/LawRules/> or interested parties can sign up for email updates at <http://www.lni.wa.gov/Main/Listservs/Boilers>.

**Statutory Authority for Adoption:** Chapter 70.79 RCW, Boilers and unfired pressure vessels.

**Statute Being Implemented:** Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Rule is not necessitated by federal law, federal or state court decision.

**Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters:** None.

**Name of Proponent:** L&I, governmental.

**Name of Agency Personnel Responsible for Drafting:** Tony Oda, Program Manager, Tumwater, Washington, 360-902-5270; **Implementation and Enforcement:** José Rodriguez, Assistant Director, Tumwater, Washington, 360-902-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

contacting Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email [Alicia.Curry@Lni.wa.gov](mailto:Alicia.Curry@Lni.wa.gov).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. An analysis was done on the portions of the rule not exempt as listed above. The following portions of the proposed rules did not impose any additional costs of compliance:

- Costs associated with the transfer of the requirements for obtaining and paying for an installation permit from the owners to the boilers and pressure vessels installers as installers are expected to charge the permit fee to the owners, resulting in no new compliance costs.
- Amendments related to civil penalties assessed for non-compliance with the rule requirements do not themselves impose new requirements or costs of compliance.

For the portions of the proposed rule determined to have costs based on the probable cost estimate from the cost-benefit analysis have a total cost of \$32,670 to \$60,534 on boiler installers (registered contractors and plumbers), owners, users, and operators of boilers and pressure vessels, insurance companies, local jurisdictions, owner/user inspection agencies, and inspectors. The boiler program oversees one hundred fifteen thousand three hundred fifty boilers and pressure vessels in twenty-two thousand five hundred different locations (owners and users) with approximately \$1,205,470,073 average annual payroll in 2016 (*Employment Security Department, 2016 annual report for industries by NAICS codes*). Therefore, the proposed rule will impose an average cost of \$1.45 to \$2.69 per business; which represents a range of 0.003 percent to 0.01 percent of the average annual payroll of affected businesses combined.

October 3, 2017  
Terry Chapin, Chair  
Board of Boiler Rules

**AMENDATORY SECTION** (Amending WSR 15-14-100, filed 6/30/15, effective 9/1/15)

**WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Accident"** shall

mean a failure of the boiler or unfired pressure vessel resulting in personal injury or property loss or an event which renders a boiler or unfired pressure vessel unsafe to return to operation.

"**Agriculture purposes**" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"**Attendant**" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"**Automatic operation of a boiler**" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"**Board of boiler rules**" or "**board**" shall mean the board created by law and empowered under RCW 70.79.010.

"**Boiler and unfired pressure vessel installation/reinstallation permit**," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

~~((Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."))~~

"**Boilers and/or unfired pressure vessels**" - Below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- "Boiler/unfired pressure vessel status" shall mean:
  - \* Active - Boilers or pressure vessels that are currently in service.
  - \* Inactive - Boilers or pressure vessels still located at the facility but are physically disconnected from the energy input and system.
  - \* Out-of-service - Boilers or pressure vessels that are no longer at the facility.
  - \* Scrapped - Boilers or pressure vessels that have been condemned as defined below.
- "**Condemned boiler or unfired pressure vessel**" shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements ~~((and appropriately marked by an inspector))~~. The following procedure shall be utilized:
  - (a) The inspector will issue and follow the department's "red tag" procedure.
  - (b) The object will be immediately removed from service.
  - (c) The existing national board and state number shall be obliterated by the inspector.
  - (d) The ASME nameplate and/or stamping shall be physically removed by the owner/user and verified by the inspector.

- (e) If required by the inspector, a portion of the pressure vessel shall be physically removed by the owner/user. This action will render the object incapable of holding pressure.
- (f) The inspector shall document this procedure on the boiler/pressure vessel inspection report and change the object status to "scrapped."
  - "**Corrosion**" shall mean the destruction or deterioration of a material, that results from a reaction with its environment.
  - "**Expansion tank**" shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
  - "**Historical boilers and unfired pressure vessel**" shall mean nonstandard boilers and pressure vessels including steam tractors, traction engines, hobby steam boilers, portable steam boilers, and other such boilers or pressure vessels that are preserved, restored, and maintained only for demonstration, viewing, or educational purposes. They do not include miniature hobby boilers as described in RCW 70.79.070.
  - "**Hot water heater**" shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:
    - \* Pressure of 160 psi (1100 kpa);
    - \* Temperature of 210 degrees F (99°C).
Additional requirements:
    - \* Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
    - \* Hot water heaters exceeding 200,000 Btu/hr (58.58 kW) input must be ASME code stamped.
  - "**Indirect water heater**" shall mean a closed vessel appliance used to heat water for use external to itself, which includes a heat exchanger used to transfer heat to water from an external source. The requirements and limits described above shall apply.
  - "**Installer**" shall mean any entity or individual who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is defined as a registered contractor, owner, user or designee.
  - "**Low pressure boiler**" shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity,

solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.

- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Pool heaters"** shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.
  - (a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 kW) or less shall be manufactured and certified to ANSI Z21.56, UL1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.
  - (b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.
  - (c) Pool heaters open to the atmosphere are excluded.
    - **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
    - **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
    - **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
    - **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
    - **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
    - **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:
      - \* Fired process tubular heaters;
      - \* Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
      - \* Piping whose primary function is to transport fluids from one location to another;

- \* Those vessels defined as low pressure heating boilers or power boilers.

- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

**"Certificate of competency"** shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

**"Certificate of inspection"** shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

**"Code, API-510"** shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

**"Code, ASME"** shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

**"Code, NBIC"** shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

**"Commission"** shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

**"Department"** as used herein shall mean the department of labor and industries of the state of Washington.

**"Director"** shall mean the director of the department of labor and industries.

**"Domestic and/or residential purposes"** shall mean serving a private residence or an apartment house of less than six families.

**"Existing installations"** shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

**"Inspection certificate"** see "certificate of inspection."

**"Inspection, external"** shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

**"Inspection, internal"** shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

**"Inspector"** shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

**"Jacketed steam kettle"** shall mean a pressure vessel with inner and outer walls that is subject to steam pressure and is used to boil or heat liquids or to cook food. Jacketed steam kettles with a total volume greater than or equal to one and one-half cubic feet (11.25 gallons) shall be ASME code stamped.

(a) **"Unfired jacketed steam kettle"** is one where the steam within the jacket's walls is generated external to itself, such as from a boiler or other steam source.

(b) **"Direct fired jacketed steam kettle"** is a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.

**"Nationwide engineering standard"** shall mean a nationally accepted design method, formulae and practice acceptable to the board.

**"Operating permit"** see "certificate of inspection."

**"Owner"** or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

**"Owner/user inspection agency"** shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

**"Place of public assembly"** or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing homes and assisted living facilities.

**"Special design"** shall mean a design using nationally or internationally recognized engineering standards other than the codes adopted in WAC 296-104-200.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

**WAC 296-104-015 Administration—When and where are the board meetings held?** The board of boiler rules shall hold its regular meetings (~~in February, May, Sep-~~

~~tember and November of each year~~) quarterly. The time, place, and date of each regular meeting shall be set by the department, approved by the board chair and published annually. Special meetings may be called by the chair.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

**WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?** (~~A "boiler and pressure vessel installation/reinstallation permit," as defined in WAC 296-104-010 shall be submitted by the owner or designee on a form approved by the chief inspector.~~) (1) "Boiler/pressure vessel, water heater installation or reinstallation permit" shall mean a permit approved by the chief inspector and submitted by the installer prior to starting installation or reinstallation of any boiler/pressure vessel or water heater within the jurisdiction of Washington.

(2) The "installer" is any entity or person who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is responsible for the installation/reinstallation permit fee per WAC 296-104-700.

(3) The following pressure retaining items, as defined in WAC 296-104-010, require a boiler/pressure vessel and water heater installation or reinstallation permit:

- Expansion tanks;
- Historical boilers and unfired pressure vessels;
- Hot water heaters;
- Indirect water heaters;
- Jacketed steam kettles;
- Low pressure boilers;
- Nonstandard boilers and unfired pressure vessels;
- Pool heaters;
- Power boilers;
- Reinstalled boilers and unfired pressure vessels;
- Secondhand boilers and unfired pressure vessels;
- Standard boilers and unfired pressure vessels;
- Unfired pressure vessels;
- Unfired steam boilers.

(4) The installer shall notify the chief inspector utilizing the permit form to request a permit inspection not less than ten working days prior to placing equipment in operation. Equipment shall not be operated other than for testing, prior to an inspection being conducted which finds the boiler or pressure vessel to be in compliance with this chapter.

(5) If an emergency installation (due to leakage, failure, etc.) situation occurs, the installer will notify the chief inspector within forty-eight hours after installation, utilizing the permit form to request an immediate inspection of the installation.

(6) The installer may be subject to civil penalties per WAC 296-104-701 for failure to comply with the filing requirements of the installation permit.

AMENDATORY SECTION (Amending WSR 15-14-100, filed 6/30/15, effective 9/1/15)

**WAC 296-104-102 Inspection—What are the standards for in-service inspection?** Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers, unfired pressure vessels, and safety devices in the National Board Inspection Code (NBIC), current edition Part 2, excluding Section 6, Supplements 1, ~~((2,))~~ 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be ~~((Appendix "C"))~~ Part 2, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) ~~((2004))~~ current edition ~~((with 2006 addenda))~~.

(3) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(4) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, current edition. This code may be used on or after the date of issue.

(5) TAPPI TIP 0402-16, revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 14-13-087, filed 6/17/14, effective 8/1/14)

**WAC 296-104-502 Repairs—What is the standard for nonnuclear repairs and alterations?** The standard for repairs/alterations is:

(1) National Board Inspection Code (NBIC), ~~((2013))~~ current edition Part 3, excluding Section 6, Supplements 1, ~~((2,))~~ 5, 6, and 10 which may be used as nonmandatory guidelines.

(2) The standard for repair of historical boilers or riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be ~~((Appendix C))~~ Part 3, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) ~~((2004))~~ current edition ~~((with 2006 addenda))~~.

AMENDATORY SECTION (Amending WSR 17-13-105, filed 6/20/17, effective 7/31/17)

**WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?** The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection

fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit ~~((excludes inspection and certificate of inspection fee))~~ fee of \$54.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$23.30.

Hot water heaters per RCW 70.79.090, inspection fee: \$7.10.

Heating boilers:	Internal	External
Cast iron—All sizes	\$39.30	\$31.40
All other boilers less than 500 sq. ft.	\$39.30	\$31.40
500 sq. ft. to 2500 sq. ft.	\$78.60	\$39.30
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$31.40	\$15.40
Power boilers:	Internal	External
Less than 100 sq. ft.	\$39.30	\$31.40
100 sq. ft. to less than 500 sq. ft.	\$47.60	\$31.40
500 sq. ft. to 2500 sq. ft.	\$78.60	\$39.30
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$31.40	\$15.40
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.		
	Internal	External
Less than 15 sq. ft.	\$31.40	\$23.30
15 sq. ft. to less than 50 sq. ft.	\$46.60	\$23.30
50 sq. ft. to 100 sq. ft.	\$54.40	\$31.40
For each additional 100 sq. ft. or any portion thereof	\$54.30	\$15.40
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours		\$47.60
For each hour or part of an hour in excess of 8 hours		\$71.10
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours		\$71.10
For each hour or part of an hour in excess of 8 hours		\$111.20
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours		\$47.60

For each hour or part of an hour in excess of 8 hours \$71.10

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours \$71.10

For each hour or part of an hour in excess of 8 hours \$111.20

Examination fee: A fee of \$88.00 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of \$47.50 for initial work card. A fee of \$29.50 for annual renewal.

If a special inspector changes companies: A work card fee of \$47.50.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$442.60 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

AMENDATORY SECTION (Amending WSR 05-22-092, filed 11/1/05, effective 1/1/06)

WAC 296-104-701 What are the civil penalties? (1)

An installer, owner, user, or operator of a boiler or pressure vessel that violates a provision of chapter 70.79 RCW, or of the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Operating under pressure a boiler or pressure vessel which the department has condemned, has issued a red tag or has suspended the inspection certificate:

Table with 2 columns: Offense type and Amount. Rows: First offense (\$150.00), Second offense (\$300.00), Each additional offense (\$500.00)

Each day of such unlawful operation shall be deemed a separate offense.

Operating under pressure a boiler or pressure vessel without a valid inspection certificate:

Table with 2 columns: Offense type and Amount. Rows: First offense (\$50.00), Second offense (\$100.00)

Each additional offense \$200.00

Each day of such unlawful operation shall be deemed a separate offense.

Installation of a boiler or pressure vessel without meeting prior filing requirements of WAC 296-104-020:

Table with 2 columns: Offense type and Amount. Rows: First offense (\$100.00), Second offense (\$200.00), Each additional offense (\$500.00)

Performing a repair to a boiler or pressure vessel, involving welding to a pressure retaining part, without meeting requirements of WAC 296-104-502:

Table with 2 columns: Offense type and Amount. Rows: First offense (\$150.00), Second offense (\$300.00), Each additional offense (\$500.00)

Performing an alteration to a boiler or pressure vessel without meeting requirements of WAC 296-104-502:

Table with 2 columns: Offense type and Amount. Rows: First offense (\$150.00), Second offense (\$300.00), Each additional offense (\$500.00)

Performing resetting, repair or restamping of safety valves, safety relief valves, or rupture discs, without meeting requirements of WAC 296-104-520:

Table with 2 columns: Offense type and Amount. Rows: First offense (\$150.00), Second offense (\$300.00), Each additional offense (\$500.00)

Failure of owner to notify chief inspector in case of accident which serves to render a boiler or unfired pressure vessel inoperative, as required by WAC 296-104-025:

Table with 2 columns: Offense type and Amount. Row: Each offense (\$100.00)

Failure to comply with a noncompliance report requirement:

Table with 2 columns: Time period and Amount. Rows: Within 90 days (\$100.00), Within 91-180 days (\$250.00), Within 181-270 days (\$400.00), Within 271-360 days (\$500.00)

(2) The inspection agency responsible for the in-service inspector of a boiler or unfired pressure vessel that violates a provision of chapter 296-104 WAC, or the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Failure to file a report of inspection per WAC 296-104-040:

Table with 2 columns: Offense type and Amount. Row: Each offense (\$50.00)

Failure to apply a state serial number per WAC 296-104-140:

Each offense ..... \$50.00

Failure to attach a "Red TAG" per WAC 296-104-110:

Each offense ..... \$50.00

Each object (boiler or unfired pressure vessel) is considered a separate offense.

(3) The department shall by certified mail notify a person of its determination that the person has violated this section.

(4) Any person aggrieved by an order or act under the boiler and unfired pressure vessels law or under the rules and regulations may appeal to the board of boiler rules. This appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector per RCW 70.79.361.

(5) Each day that a violation occurs will be a separate offense. A violation will be a second or additional offense only if it occurs within one year from the first violation.

**WSR 17-20-079**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 16-10—Filed October 3, 2017, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-061.

Title of Rule and Other Identifying Information: The department of ecology is proposing a new rule: Chapter 173-323 WAC, Grants and loans. This rule will apply to grants and loans issued by ecology that are funded under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act (MTCA). If an ecology grant or loan program has a rule specific to that program, this chapter will not apply.

Hearing Location(s): On Tuesday, November 7, 2017, at 9:30 a.m., webinar and in-person at the Department of Ecology Headquarters, 300 Desmond Drive S.E., Lacey, WA.

**Webinar:** Ecology is also offering this hearing via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access.

**To join** the webinar click on the following link for more information and instructions <https://watech.webex.com/watech/j.php?MTID=m755694ef9ccc3e3438747f3fcb06f53a>.

**Comments:** Ecology will accept comments at the Lacey location and through the webinar. To call in to the webinar, dial: 1-855-929-3239 or toll - US/Canada: 1-408-525-6800 Access # 809 014 731.

Date of Intended Adoption: December 4, 2017.

Submit Written Comments to: Bari Schreiner, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, email [rulemaking@ecy.wa.gov](mailto:rulemaking@ecy.wa.gov), online <http://wt.ecology.commentinput.com/?id=9FjS3>, by November 14, 2017.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668 (voice), TTY 877-833-6341, email [hanna.waterstrat@ecy.wa.gov](mailto:hanna.waterstrat@ecy.wa.gov), 711 relay service, by November 1, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing this chapter to establish ecology's guiding standards and expectations for grant and loan issuance and performance where public MTCA funds are involved, as required by RCW 70.105D.070(8). We are also proposing this rule to be more clear and consistent in how we manage public funds. Ecology intends this rule to reflect current grant and loan practices.

Reasons Supporting Proposal: Please see the answer to "Purpose of the proposal ...."

Statutory Authority for Adoption: RCW 70.105D.070(8) Toxics control accounts.

Statute Being Implemented: Chapter 70.105D RCW, MTCA.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Bari Schreiner, Ecology Headquarters, Lacey, Washington, 360-407-6998; Implementation and Enforcement: Erik Fairchild, Ecology Headquarters, Lacey, Washington, 360-407-7005.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Department of Ecology, Attn: Bari Schreiner, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6998, TTY 877-833-6341, email [rulemaking@ecy.wa.gov](mailto:rulemaking@ecy.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. As a general rule, the grants and loans covered by the proposed rule may be granted only to governmental entities. Only the air quality clean diesel grants and some one-time grants or loans can be awarded to businesses. The air quality clean diesel grants are used for diesel retrofit - idle reduction. When filling out an application for one of these grants, businesses use information they have readily available for other purposes. Because the application process for these businesses is so simple, we estimate it takes less than one hour. We also assume that for more complicated applications, for these or one-time grants or loans, ecology staff would provide additional support. For our analysis we used sixty minutes as a reasonable estimate of business time.

The actual cost of applying depends on the wage of the person inputting the application data. For the cost to exceed \$100, the wage would need to be greater than \$100 per hour on average. We are assuming that the staff completing these applications would have less than \$100 per hour salary. Therefore, the expected cost would be less than \$100 and would be less than a minor cost.

Based on research and analysis required by the Regulatory Fairness Act, chapter 19.85 RCW, ecology has determined the proposed rule imposes minor costs on businesses. The expected cost is less than \$100. Because this is below the minor cost threshold, ecology is not required to prepare a small business economic impact statement according to RCW 19.85.030 (1)(a)(i).

A copy of the detailed cost calculations may be obtained by contacting Department of Ecology, Attn: Bari Schreiner, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6998, TTY 877-833-6341, email [rulemaking@ecy.wa.gov](mailto:rulemaking@ecy.wa.gov).

October 3, 2017  
Polly Zehm  
by Darin Rice  
Deputy Director

## Chapter 173-323 WAC GRANTS AND LOANS

### NEW SECTION

**WAC 173-323-010 Applicability.** (1) This chapter only applies to grants and loans issued by ecology that are funded under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act (MTCA), and that are not regulated by another chapter of the WAC that provides requirements for a specific grant or loan program. Ecology will maintain a list of these other chapters on the agency web site.

(2) This chapter contains general rules for grant and loan issuance and performance, and applies to the following types of grants and loans issued by the department of ecology:

- (a) Competitive.
- (b) Formula.
- (c) One-time.

### NEW SECTION

**WAC 173-323-020 Definitions. Agreement effective date** means the date on which the grant or loan agreement becomes effective, as specified in the grant or loan agreement. This is the earliest date eligible costs can be incurred.

**Agreement expiration date** means the latest date eligible costs can be incurred, as specified in the grant or loan agreement.

**Competitive grants and loans** mean grants or loans that are evaluated and awarded based on prioritization, scoring, or ranking.

**Ecology** means the Washington state department of ecology.

**Eligible costs** mean costs that meet all criteria established in the agreement and grant or loan program funding guidelines.

**Formula grants and loans** mean grants or loans awarded based on distribution factors, such as population.

**Grant** means an award of financial assistance given to a recipient to carry out work for a public purpose or public good authorized by law.

**Grant or loan agreement or agreement** means the formal, written, contractual document that details the terms and

conditions, scope of work, budget, and schedule of the grant or loan, and that is signed by the authorized signatories of the recipient and ecology.

**Grant or loan program** means a financial assistance program with a distinct set of requirements that provides grant or loan funding to eligible applicants.

**Loan** means an agreement involving lending money to a recipient.

**One-time grant or loan** means a grant or loan that **is not formula or competitive and** involves one or more of the following:

- (a) Designation by the legislature or governor; such as a recipient, project, or type of work.
- (b) Identification of recipient(s) based on input from an advisory or stakeholder group(s).
- (c) An environmental or human health emergency, priority, or concern.

**Signature date** means the date the ecology authorized signatory signs the agreement.

### NEW SECTION

#### **WAC 173-323-030 Grant and loan announcements.**

##### **Competitive and formula grants and loans**

(1) Ecology must announce the availability of funding opportunities for competitive and formula grants and loans. The announcement must include, at a minimum, a description of:

- (a) Purpose of the grant or loan.
- (b) Funding cycle for the grant or loan.
- (c) Amount of funding available, if known.
- (d) Eligibility criteria for the grant or loan.
- (e) Information about how to apply.
- (f) Application deadlines.
- (g) Ecology contact information.

##### **One-time grants and loans**

(2) Ecology is not required to announce the availability of funding opportunities for one-time grants or loans.

##### **Unused funds**

(3) Ecology is not required to announce the availability of unused funds. Ecology awards unused funds based on the requirements in WAC 173-323-060. Unused funds are one or all of the following:

- (a) Funds awarded by ecology, but not used by the recipient.
- (b) Funds offered by ecology, but not accepted by the recipient.
- (c) Funds not awarded by ecology in the initial distribution cycle.

### NEW SECTION

**WAC 173-323-040 Application.** (1) All applicants must use the electronic system identified by ecology to apply for grants and loans. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

- (a) Applicant information.
- (b) Project location and description.
- (c) Scope of work and tasks for the project.
- (d) Requested funding amount for the project.
- (e) Any other information required by ecology for the specific type of grant or loan.

(3) For formula or competitive grants and loans, the applicant must submit the application by the due date, if a due date is included in the announcement. Ecology may approve a later due date.

(4) Ecology may request additional information to assist in the application evaluation process.

#### NEW SECTION

**WAC 173-323-050 Evaluation process.** (1) Ecology reviews and evaluates applications to determine eligibility and funding.

(2) Ecology determines project funding based on a grant or loan program evaluation process.

(3) Ecology evaluates all applications submitted within all required deadlines.

#### **Competitive and formula grants and loans**

(4) When evaluating competitive and formula grant and loan applications, ecology considers:

- (a) Eligibility of the applicant and whether the project meets the eligibility criteria.
- (b) Whether the application demonstrates all of the following:
  - (i) Readiness to proceed.
  - (ii) Feasibility of the project.
  - (iii) Availability of matching funds, if applicable.
- (c) The applicant's past grant or loan performance.

#### **One-time grants and loans**

(5) When evaluating a one-time grant or loan application, ecology considers:

- (a) Whether the project is eligible for the funding based on the authority for the funding or, when appropriate, the specific direction of the legislature or governor.
- (b) Whether the project is an effective use of available funds.
- (c) The applicant's past grant or loan performance.

#### NEW SECTION

**WAC 173-323-060 Awarding funds.** (1) Ecology must award grants and loans:

- (a) Consistent with all federal and state laws and rules authorizing the funding and any specific direction by the legislature.
  - (b) Subject to available funds.
  - (c) Based on evaluations of grant or loan applications submitted.
- (2) Ecology has discretion to determine what the final award amount will be.

#### NEW SECTION

**WAC 173-323-070 Grant or loan agreement.** (1) Ecology works with the recipient to prepare the grant or loan agreement.

(2) A grant or loan agreement issued and managed in ecology's electronic system must include, at a minimum:

- (a) Project description.
- (b) Expected outcomes.
- (c) Project budget and funding distribution.
- (d) Agreement effective date and expiration date.
- (e) Description of tasks and deliverables.
- (f) Contact information for ecology and the recipient.
- (g) Signatures of authorized signatories.
- (h) General terms and conditions that specify requirements related, but not limited to:
  - (i) Amendments and modifications.
  - (ii) Assignment limits on transfer of rights or claims.
  - (iii) Inadvertent discovery of human remains and/or cultural resources.
  - (iv) Compliance with all laws.
  - (v) Conflict of interest.
  - (vi) Disputes.
  - (vii) Environmental data standards.
  - (viii) Governing law.
  - (ix) Indemnification.
  - (x) Independent status of the parties to the agreement.
  - (xi) Order of precedence for laws, rules, and the agreement.
  - (xii) Property rights, copyrights, and patents.
  - (xiii) Records, audits, and inspections.
  - (xiv) Recovery of funds.
  - (xv) Severability.
  - (xvi) Suspension.
  - (xvii) Sustainable practices.
  - (xviii) Termination.
  - (xix) Third-party beneficiary.
  - (xx) Waiver of agreement provisions.
- (i) Special terms and conditions, if any.
- (j) Agreement-specific terms and conditions, if any.
- (k) General federal conditions, if any.
- (l) Other items, if any, necessary to meet the goals of the grant or loan program.

#### NEW SECTION

**WAC 173-323-080 Amendments to the grant or loan agreement.** (1) A change to any of the following items requires an amendment to the agreement:

- (a) Scope of work or the objectives of the project.
- (b) Budget, whether for an increase or decrease.
- (c) Funding, whether for an increase or decrease.
- (d) Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs of the funding distribution.
- (e) Funding distributions, including share percentages.
- (f) Agreement effective or expiration date, whether to shorten or extend.
- (g) Special terms and conditions or agreement-specific terms and conditions.

(2) Administrative changes do not require an amendment. Examples of administrative changes include updates to contact names, addresses, and phone numbers.

(3) An amendment must be signed by all parties before it is effective.

#### NEW SECTION

#### **WAC 173-323-090 Performance standards.**

##### **General provisions**

(1) Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant or loan.

(2) Ecology and the recipient must fulfill their obligations under the terms of a grant or loan agreement.

(3) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant or loan agreements and records.

(4) New ecology grant and loan agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(5) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

##### **Recipient standards**

(6) Recipients must:

(a) Follow all applicable accounting and auditing laws and rules related to grants and loans.

(b) Use funds according to the agreement.

(c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules.

(d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement.

(e) Obtain preapproval for equipment purchases over the amount specified in the agreement.

(7) As specified in the grant or loan agreement, the recipient must submit the following to ecology:

(a) Progress reports.

(b) Payment requests.

(c) Equipment purchase reports.

(d) Documentation.

(e) A final closeout report.

(f) Any other required information.

##### **Ecology standards**

(8) Ecology must:

(a) Follow all applicable accounting and auditing laws and rules related to grants and loans.

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement.

(c) Confirm that ecology has received required documentation and the project is satisfactorily completed before approving final payment.

#### NEW SECTION

**WAC 173-323-100 Reimbursement.** (1) Ecology will only reimburse eligible costs incurred between the effective date and the expiration date of an agreement.

(a) Ecology will not reimburse costs until on or after the signature date of an agreement.

(b) Any costs incurred before the signature date are at the recipient's risk.

(2) The recipient must submit a progress report with a payment request and other documentation as required in the grant or loan agreement to be reimbursed.

(3) Ecology will not issue final payment until the closeout requirements in WAC 173-323-110 have been met.

#### NEW SECTION

**WAC 173-323-110 Closing out the agreement.** (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant or loan agreement when it determines the recipient has met the closeout requirements or when the agreement has been terminated (see WAC 173-323-120).

#### NEW SECTION

**WAC 173-323-120 Termination of agreement.** (1) Failure by the recipient to comply with a grant or loan agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the agreement effective date and prior to agreement expiration date, ecology, at its sole discretion, may elect to suspend or terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions.

(4) Ecology will document the termination of an agreement.

**WSR 17-20-080**

**PROPOSED RULES**

**DEPARTMENT OF**

**LABOR AND INDUSTRIES**

[Filed October 3, 2017, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-112.

Title of Rule and Other Identifying Information: Chapter 296-128 WAC, Minimum wages; chapter 296-131 WAC, Agriculture employment standards; and chapter 296-126 WAC, Standards of labor for the protection of the safety, health and welfare of employees for all occupations subject to chapter 49.12 RCW.

New proposed rules: WAC 296-128-780 Enforcement—Retaliation, 296-128-790 Enforcement—Retaliation—Civil penalties, 296-128-800 Enforcement—Retaliation—Appeals, 296-128-810 Enforcement—Paid sick leave, 296-128-820 Enforcement—Tips and service charges, 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties, 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals, 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW—Collection procedures, and 296-128-860 Severability clause.

Hearing Location(s): On November 8, 2017, at 10:00 a.m., at the Spokane CenterPlace Auditorium, 2426 North Discovery Place, Spokane Valley, WA 99216; and on November 9, 2017, at 10:00 a.m., at the Labor and Industries Headquarters Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: December 19, 2017.

Submit Written Comments to: Allison Drake, Department of Labor and Industries, Fraud Prevention and Labor Standards, P.O. Box 44400, Olympia, WA 98504-4400, email i1433Rules@Lni.wa.gov, fax 360-902-5300, by November 17, 2017.

Assistance for Persons with Disabilities: Contact office of information and assistance, phone 360-902-5304, TTY 360-902-5797, by November 1, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose rules pertaining to the enforcement directives related to the implementation of Initiative 1433, An Act Related to Fair Labor Standard. Initiative 1433 passed on November 8, 2016, and requires, in part, employers provide paid sick leave to employees beginning on January 1, 2018. Initiative 1433 directs the department to adopt and implement rules to carry out and enforce the act.

Reasons Supporting Proposal: The department must implement the will of the people as passed by Initiative 1433.

Statutory Authority for Adoption: RCW 49.46.810.

Statute Being Implemented: RCW 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule language describes the enforcement directives of Initiative 1433, which must be at least equal to enforcement of the minimum wage.

Name of Proponent: Department of labor and industries, as directed by Initiative 1433, governmental.

Name of Agency Personnel Responsible for Drafting: Allison Drake, Tumwater, Washington, 360-902-5304;

Implementation and Enforcement: Elizabeth Smith, Tumwater, Washington, 360-902-5933.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Initiative Measure No. 1433 (I-1433), under RCW 49.46.810, requires the department adopt and implement rules to carry out and enforce the initiative, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under chapter 49.46 RCW. RCW 48.46.810 [49.46.810] further specifies the department's rules for enforcement of rights under chapter 49.46 RCW shall be at least equal to enforcement of the minimum wage. Administrative enforcement of the minimum wage is pursuant to the Wage Payment Act under RCW 49.48.083 though [through] 49.48.086.

There is a separate rule making to adopt and implement rules to carry out the substantive requirements of I-1433 (WSR 17-02-082, 17-14-113). This separate rule making includes an assessment of the costs of the substantive requirements.

As this rule making addresses the administrative enforcement provisions of I-1433 and the substantive requirements of I-1433, there are no costs of compliance to employers under these rules. These proposed enforcement rules are the procedural requirements related to the investigation of complaints, issuance of civil penalties, appeals of department decisions, and collections. The rules are consistent with RCW 49.46.810, and the requirements for investigations, civil penalties, appeals, and collections under the Wage Payment Act under RCW 49.48.083 though [through] 49.48.086, or are interpretative of provisions of I-1433 and the Wage Payment Act.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: I-1433, under RCW 49.46.-810, requires the department adopt and implement rules to carry out and enforce the initiative, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under chapter 49.46 RCW. RCW 48.46.810 [49.46.-810] further specifies the department's rules for enforcement of rights under chapter 49.46 RCW shall be at least equal to enforcement of the minimum wage. Administrative enforcement of the minimum wage is pursuant to the Wage Payment Act under RCW 49.48.083 though [through] 49.48.086.

There is a separate rule making to adopt and implement rules to carry out the substantive requirements of I-1433 (WSR 17-02-082, 17-14-113). This separate rule making includes an assessment of the costs of the substantive requirements.

As this rule making addresses the administrative enforcement provisions of I-1433 and the substantive requirements of I-1433, there are no costs of compliance to

employers under these rules. These proposed enforcement rules are the procedural requirements related to the investigation of complaints, issuance of civil penalties, appeals of department decisions, and collections. The rules are consistent with RCW 49.46.810, and the requirements for investigations, civil penalties, appeals, and collections under the Wage Payment Act under RCW 49.48.083 through [through] 49.48.086, or are interpretative of provisions of I-1433 and the Wage Payment Act.

October 3, 2017  
Joel Sacks  
Director

#### NEW SECTION

**WAC 296-128-780 Enforcement—Retaliation.** (1) An employee who believes that they were subject to retaliation by their employer, as defined in WAC 296-128-770, for the exercise of any employee right under chapter 49.46 RCW, may file a complaint with the department within one hundred eighty days of the alleged retaliatory action. The department may, at its discretion, extend the one hundred eighty-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the one hundred eighty-day period when there is evidence that the employer has concealed or misled the employee regarding the alleged retaliatory action.

(2) If an employee files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance within ninety days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(3) The department may consider a complaint to be otherwise resolved when the employer and employee reach a mutual agreement to remedy any retaliatory action, or the employee voluntarily and on their own initiative withdraws their complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, back pay, and reestablishment of benefits.

(4) If the department's investigation finds that the employee's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the employee and employer detailing such finding.

(5) If the department's investigation finds that the employer retaliated against the employee, and the complaint is not otherwise resolved, the department may notify the employer that the department intends to issue a citation and notice of assessment and provide up to thirty days after the date of such notification for the employer to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the employer to make payable to the employee earnings that the employee did not receive due to the

employer's retaliatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee;

(b) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment;

(c) Order the employer to cease using any policy that counts the use of paid sick leave as an absence that may lead to or result in discipline against the employee;

(d) For the first violation, order the employer to pay the department a civil penalty as specified in WAC 296-128-790; and

(e) For a repeat violation, order the employer to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the employer and employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(7) During an investigation of the employee's retaliation complaint, if the department discovers information suggesting alleged violations by the employer of the employee's other rights under chapter 49.46 RCW, and all applicable rules, the department may investigate and take appropriate enforcement action without requiring the employee to file a new or separate complaint. If the department determines that the employer violated additional rights of the employee under chapter 49.46 RCW, and all applicable rules, the employer may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the employer retaliated against or otherwise violated rights of other employees under chapter 49.46 RCW, and all applicable rules, the department may launch further investigation under chapter 49.46 RCW, and all applicable rules, without requiring additional complaints to be filed.

(8) The department may prioritize retaliation investigations as needed to allow for timely resolution of complaints.

(9) Nothing in WAC 296-128-780 through 296-128-800 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(10) Nothing in WAC 296-128-780 through 296-128-800 precludes an employee's right to pursue private legal action.

#### NEW SECTION

**WAC 296-128-790 Enforcement—Retaliation—Civil penalties.** (1) If the department's investigation finds that an employer retaliated against an employee, pursuant to the procedures outlined in WAC 296-128-780, the department may order the employer to pay the department a civil penalty. A civil penalty for an employer's retaliatory action shall be not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid earnings attributable to the retaliatory action, whichever is greater. The maximum civil penalty for an employer's retaliatory action shall be twenty

thousand dollars for the first violation, and forty thousand dollars for each repeat violation.

(2) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action to remedy the retaliatory action.

(3) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Collections of unpaid citations and notices of assessment, as detailed in WAC 296-128-780(5), will be handled pursuant to the procedures outlined in RCW 49.48.086.

#### NEW SECTION

**WAC 296-128-800 Enforcement—Retaliation—Appeals.** (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may, within thirty days after the date of such decision, submit a request for reconsideration to the department setting forth the grounds for seeking such reconsideration, or submit an appeal to the director pursuant to the procedures outlined in subsection (4) of this section. If the department receives a timely request for reconsideration, the department will either accept the request or treat the request as a notice of appeal.

(2) If a request for reconsideration is accepted, the department will send notice of the request for reconsideration to the employer and employee. The department will determine if there are any valid reasons to reverse or modify the department's original decision to issue a citation and notice of assessment or determination of compliance within thirty days of receipt of such request. The department may extend this period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension. After reviewing the reconsideration, the department will either:

(a) Notify the employee and employer that the citation and notice of assessment or determination of compliance is affirmed; or

(b) Notify the employee and employer that the citation and notice of assessment or determination of compliance has been reversed or modified.

(3) A request for reconsideration submitted to the department shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending the reconsideration decision by the department.

(4) Within thirty days after the date the department issues a citation and notice of assessment or a determination of compliance, or within thirty days after the date the department issues its decision on the request for reconsideration, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may file with the director a notice of appeal.

(5) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(6) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(7) If a request for reconsideration is not submitted to the department within thirty days after the date of the original citation and notice of assessment or determination of compliance, and a person, firm, or corporation aggrieved by a citation and notice of assessment or determination of compliance did not submit an appeal to the director, then the citation and notice of assessment or determination of compliance is final and binding, and not subject to further appeal.

(8) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(9) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(10) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-780 through 296-128-800 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department.

#### NEW SECTION

**WAC 296-128-810 Enforcement—Paid sick leave.** (1) If an employee files a complaint with the department alleging that their employer failed to provide the employee with paid sick leave as provided in RCW 49.46.200 and 49.46.210, the department will investigate the complaint as an alleged violation of a wage payment requirement, as defined by RCW 49.48.082(12).

(2) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover during an ongoing employment relationship, the employee may elect to:

(a) Receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, based on a calculation of at least one hour of paid sick leave for every forty hours worked as an employee during the period of noncompliance; or

(b) Receive payment from the employer at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been reasonably expected to use during the period of noncompliance, not to exceed an amount the employee would have otherwise accrued. The employee will receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, less the number of paid sick leave hours paid out to the employee pursuant to this subsection.

(3) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover, and the employee is no longer employed by the same employer, the employee may elect to receive payment at their normal hourly compensation, receive reinstatement of the balance of paid sick leave hours, or receive a combination of payment and reinstatement from the employer for all hours of paid sick leave that would have accrued during the period of noncompliance. Such hours must be based on a calculation of at least one hour of paid sick leave for every forty hours worked as an employee.

(4) The department's notice of assessment, pursuant to RCW 49.48.083, may order the employer to provide the employee access to accrued, unused paid sick leave hours that would have accrued absent the employer's noncompliance.

(5) For purposes of this section, an employer found to be in noncompliance cannot cap the employee's carryover of paid sick leave at forty hours to the following year for each year of noncompliance ("year" as defined in WAC 296-128-620(6)).

#### NEW SECTION

**WAC 296-128-820 Enforcement—Tips and service charges.** If an employee files a complaint with the department alleging that their employer failed to pay to the employee all tips and gratuities, and all service charges as defined under RCW 49.46.160, except those that, pursuant to RCW 49.46.160, are itemized as not being payable to the employee or employees servicing the customer, the department will investigate the complaint pursuant to the procedures outlined in the Wage Payment Act, RCW 49.48.082 through 49.48.087.

#### NEW SECTION

**WAC 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties.** (1) If an employee files a complaint with the department alleging a violation of their rights under chapter 49.46 RCW, and all applicable rules, that are not otherwise enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, the department will investigate the complaint under this section. Alleged violations include, but are not limited to, failure of an employer to comply with: The recordkeeping requirements set forth in WAC 296-128-010; the requirements to maintain written policies or collective bargaining agreements, as outlined in WAC 296-128-650(3), 296-128-660(2), 296-128-710(1), and 296-128-730(4); and notification and reporting requirements set forth in WAC 296-128-760.

(a) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the employee filed the complaint.

(b) If an employee files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter within sixty days after the date on which the

department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(c) The department will send notice of a citation assessing a civil penalty or the closure letter to both the employer and employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department will issue a closure letter to the employee and employer detailing such finding.

(3) If the department determines that the violation of rights under chapter 49.46 RCW, and all applicable rules, that are not enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, was a willful violation, and the employer fails to take corrective action, the department may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be one thousand dollars for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than two thousand dollars for each repeat willful violation, but no greater than twenty thousand dollars for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the employer reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section if the director determines that the employer has taken corrective action to resolve the violation.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46 RCW, and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

NEW SECTION

**WAC 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals.** (1) A person, firm, or corporation aggrieved by a citation assessing a civil penalty issued by the department under WAC 296-128-830 may appeal the citation assessing a civil penalty to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation assessing a civil penalty. A citation assessing a civil penalty not appealed within thirty days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation assessing a civil penalty pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation assessing a civil penalty will be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-830 through 296-128-850 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department of earnings owed or penalties assessed.

NEW SECTION

**WAC 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW—Collection procedures.** Collections of unpaid citations assessing civil penalties will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

**WAC 296-128-860 Severability clause.** If any provision of these rules or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

**WSR 17-20-081**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 16-14—Filed October 3, 2017, 11:49 a.m.]

Continuance of WSR 17-19-076.

Preproposal statement of inquiry was filed as WSR 17-06-066.

Title of Rule and Other Identifying Information: The department of ecology is proposing amendments to chapter 173-03 WAC, Public records. The purpose of this chapter is to implement the requirements of the Public Records Act including the process the agency uses for disclosing records. This update will modernize the rule to reflect current law, technology, and processes.

Hearing Location(s): On October 24, 2017, at 1:00 p.m., in-person in Lacey and Webinar, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503. The public hearing for this rule making is on the same day. **Below is updated information for joining the webinar.**

**Webinar:** Ecology is offering this hearing via webinar and in person. Webinars are online meeting forums that you can attend from any computer using internet access.

**Updated:** To join the webinar and get more information and instructions <https://watech.webex.com/watech/j.php?MTID=mc47a99b8a3e1f9e97d4bbb46581ab146>.

For audio only call US Toll +1-240-454-0887 Access code: 808 166 411, or to receive a free call back, provide your phone number why [when] you join the event.

**Comments:** Ecology will accept comments at the Lacey location and through the webinar.

Date of Intended Adoption: November 8, 2017.

October 3, 2017  
 Polly Zehm  
 by Darin Rice  
 Deputy Director

**WSR 17-20-082**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 3, 2017, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-011.

Title of Rule and Other Identifying Information: WAC 308-104-014 Application for driver's license or identicard.

Hearing Location(s): On November 7, 2017, at 2:00 p.m., at the Highway[s]-Licenses Building, Conference Room 406, 1125 Washington Street S.E., Olympia, WA 98507. Check in at the first floor counter.

Date of Intended Adoption: November 8, 2017.

Submit Written Comments to: Stephanie Sams, Policy and Legislative Analyst, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email [ssams@dol.wa.gov](mailto:ssams@dol.wa.gov), by November 6, 2017.

Assistance for Persons with Disabilities: Contact Stephanie Sams, policy and legislative analyst, phone 360-9002-

0131 [360-902-0131], fax 360-664-0116, email ssams@dol.wa.gov, by November 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will define "homeless" for the purposes of issuing a reduced cost identicard to homeless youth.

Reasons Supporting Proposal: SB 5382 (chapter 122, Laws of 2017) enacted during the 2017 legislative session, authorizes the department to create rules that allow the department to issue identicards at a reduced cost to applicants who are under the age of eighteen and without a permanent residence address.

Statutory Authority for Adoption: RCW 46.20.117.

Statute Being Implemented: RCW 46.20.117.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Sams, Highway[s-]Licenses Building, Olympia, Washington, 360-902-0131; Implementation and Enforcement: Greg Mukai, Highway[s-]Licenses Building, Olympia, Washington, 360-902-3851.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i) and (b)(v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 3, 2017  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-067, filed 6/30/11, effective 7/31/11)

**WAC 308-104-014 Application for driver's license or identicard.** A person applying for a driver's license, instruction permit, or identification card must provide the following information:

(1)(a) The person's full name, current mailing and Washington residential address, and telephone number;

(b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:

(i) Is under the age of eighteen;

(ii) Applies in person;

(iii) Attests to a lack of permanent primary resident address at each application; and

(iv) Provides a temporary mailing address where the identicard can be mailed.

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date and place of birth;

(4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;

(5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, (~~cancelled~~) canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

**WSR 17-20-095**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 3, 2017, 3:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-152.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-492-0070 How are my WASHCAP food benefits calculated?, in order to decrease the low shelter standard from \$235 to \$210.

Hearing Location(s): On November 7, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 8, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., November 7, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by October 24, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-492-0070 in order to decrease the low shelter standard from \$235 to \$210 to maintain cost neutrality as required by the United States Department of Agriculture, Food and Nutrition Services (FNS) to continue the operation of the WASHCAP demonstration project.

Reasons Supporting Proposal: The United States Department of Agriculture, FNS enforces the provisions of the federal Supplemental Nutrition Assistance Program as enacted in the 2008 Food and Nutrition Act and codified in the Code the [of] Federal Regulations. The department will develop amendments to WASHCAP rules that are consistent with the act, federal regulations, and our approved WASHCAP demonstration project waiver while ensuring cost neutrality of the program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 282.1.

Statute Being Implemented: 7 C.F.R. 282.1.

Rule is necessary because of federal law, 7 C.F.R. 282.1.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, 360-725-4895.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the Department of Social and Health Services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 282.1. (If the proposed rule is not

adopted the state will be out of compliance with federal regulations.)

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

September 29, 2017

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-019, filed 6/12/17, effective 7/13/17)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your Washington state combined application project (WASHCAP) food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA) unless you report a change as described under WAC 388-492-0080.
  - (a) If you pay three hundred twenty dollars or more a month for shelter, we use four hundred twenty-five dollars as your shelter cost.
  - (b) If you pay less than three hundred twenty dollars a month for shelter, we use two hundred ~~((and thirty five))~~ ten dollars as your shelter cost.
  - (c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either (a) or (b) of this subsection to determine your total shelter cost.
  - (4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.
  - (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
  - (6) We figure your WASHCAP food benefits (allotment) by:
    - (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
    - (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
    - (7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

## WSR 17-20-096

### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed October 3, 2017, 3:58 p.m.]

WAC 246-830-200, proposed by the department of health in WSR 17-07-113, appearing in issue 17-07 of the

Washington State Register, which was distributed on April 5, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 17-20-099**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 16-12—Filed October 4, 2017, 6:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-05-029.

Title of Rule and Other Identifying Information: Chapter 173-407 WAC, Carbon dioxide mitigation program, greenhouse gases emissions performance standard and sequestration plans and programs for thermal electric generating facilities.

This rule requires power plants and units to:

- Reduce carbon dioxide emissions (CO<sub>2</sub> mitigation; Part I).
- Meet the greenhouse gas emissions performance standard (Part II).
- Develop and implement plans or programs to reduce greenhouse gases as approved by ecology (Part II).

This rule also describes ecology's consultation with utilities and transportation commission and consumer-owned utilities (Part III).

Most changes in this rule making only apply to new power plants and units, and existing power plants and units that change ownership, upgrade with an increase in heat input or fuel usage, or sign a new long-term financial commitment (such as power purchase agreements and plant purchases).

Hearing Location(s): On November 7, 2017, at 2:00 p.m., webinar and in person at Department of Ecology Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503. Presentation, question and answer session followed by the formal public hearing.

We are also holding this hearing via webinar. This is an online meeting forum that you can attend from any computer using internet access.

To join the webinar click on the following link for more information and instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e4d9f2cb8c73703a13295ee4999130d45>.

For audio only, call U.S. toll number +1-240-454-0887 and enter access code 809 694 382, or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: February 21, 2018.

Submit Written Comments to: Caroline (Ying) Sun, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, email please submit comments online or by mail, submit comments online at

<http://ac.ecology.commentinput.com/?id=HbNcY>, by November 14, 2017.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668, TTY 877-833-6341, email [hanna.waterstrat@ecy.wa.gov](mailto:hanna.waterstrat@ecy.wa.gov), 711 relay service, by October 31, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing to amend chapter 173-407 WAC for the following reasons:

- To comply with RCW 80.80.040 by adopting the most recent greenhouse gas emissions performance standard (standard) from WAC 194-26-020.
- To simplify future updates to the standard by referencing WAC 194-26-020 for any new standard implemented after the effective date of this rule.
- To be consistent with greenhouse gas emissions reporting required by EPA and chapter 173-441 WAC by replacing the carbon dioxide conversion factors in Part I of this rule with the emission factors from 40 C.F.R. Part 98, Table C-1.
- To reduce unnecessary monitoring requirements by allowing certain facilities that are subject to the standard to have the option to use carbon dioxide emission factors from 40 C.F.R. Part 98, Table C-1.
- To reduce unnecessary emission testing requirements by allowing facilities that become subject to the standard after the effective date of this rule to have the option to use methane and nitrous oxide emission factors from 40 C.F.R. Part 98, Table C-2.
- To align this rule with chapters 80.70 and 80.80 RCW.
- To make technical clarifications, correct errors, and improve readability.

Reasons Supporting Proposal: See answer to Purpose of the proposal and its anticipated effects.

Statutory Authority for Adoption: Chapters 80.70 and 80.80 RCW.

Statute Being Implemented: Chapters 80.70 and 80.80 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Caroline (Ying) Sun, Lacey, 360-407-7528; Implementation and Enforcement: Part I: By ecology and local clean air agencies; Parts II and III: By ecology only, Lacey, 360-407-6000.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Caroline (Ying) Sun, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-7528, TTY 877-833-6341, email [caroline.sun@ecy.wa.gov](mailto:caroline.sun@ecy.wa.gov).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Ecology has determined the proposed rule does not impact small businesses. After looking at Employment Security data for number of employees, we determined that the businesses regulated by this chapter do not meet the definition of small business in RCW 19.85.020(3).

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting: Caroline (Ying) Sun, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-7528, TTY 877-833-6341, email caroline.sun@ecy.wa.gov.

September 21, 2017

Polly Zehm

Deputy Director

### Chapter 173-407 WAC

#### ~~((CARBON DIOXIDE MITIGATION PROGRAM, GREENHOUSE GASES EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS FOR THERMAL ELECTRIC GENERATING FACILITIES)) GREENHOUSE GAS MITIGATION REQUIREMENTS AND EMISSIONS PERFORMANCE STANDARD FOR POWER PLANTS~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

WAC 173-407-005 ((Work in unison.)) Overview. ((The requirements of this chapter, WAC 173-407-010 through 173-407-070, are based upon chapter 80.70 RCW and are separate and distinct from the requirements found in this chapter, WAC 173-407-100 through 173-407-320 that are based upon chapter 80.80 RCW. These two requirements are required to work in unison with each other in a serial manner. The first requirement is the emissions performance standard. Once that standard is met, the requirements of chapter 80.70 RCW (WAC 173-407-010 through 173-407-070) are applied.)) (1) There are three separate parts to this rule:

(a) Part I covers CO<sub>2</sub> mitigation in WAC 173-407-010 through 173-407-090.

(b) Part II covers GHG EPS in WAC 173-407-100 through 173-407-240.

(c) Part III covers long-term financial commitments and ecology's consultation in WAC 173-407-300 through 173-407-400.

(2) Part I and Part II work together. Apply the requirements in this sequence:

(a) GHG EPS (Part II); and then

(b) CO<sub>2</sub> mitigation (Part I).

(3) The owner of a coal-fired electric generation facility subject to RCW 80.80.040 (3)(c) must comply with RCW 80.70.080.

#### NEW SECTION

**WAC 173-407-006 Adoption of federal rules.** Federal rules mentioned in this rule are adopted as they exist on (*adoption date of this rule in February 2018*).

#### PART I

#### ~~CARBON DIOXIDE MITIGATION ((FOR FOSSIL-FUELED THERMAL ELECTRIC GENERATING FACILITIES, IMPLEMENTING CHAPTER 80.70 RCW)) REQUIREMENTS~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-010 Policy and purpose of Part I.** (1) ((It is the policy of the state to require mitigation of the emissions of carbon dioxide (CO<sub>2</sub>)) Chapter 80.70 RCW requires mitigation of CO<sub>2</sub> emissions from all new and certain modified fossil-fueled thermal electric generating facilities with station-generating capability of more than 25 megawatts of electricity (MWe).

(2) A fossil-fueled thermal electric generating facility is not subject to the requirements of chapter 173-401 WAC solely due to its emissions of CO<sub>2</sub>.

(a) Emissions of other regulated air pollutants must ((be a large enough quantity to)) trigger ((those)) the requirements of chapter 173-401 WAC.

(b) For a fossil-fueled thermal electric generating ((facilities that are)) facility subject to chapter 173-401 WAC, the CO<sub>2</sub> mitigation requirements are an applicable requirement under that regulation.

(3) A fossil-fueled thermal electric generating facility not subject to the requirements of chapter 173-401 WAC is subject to the requirements of the registration program in chapter 173-400 WAC.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-020 Definitions to Part I.** The definitions in this section are ((found in RCW 80.70.010 and apply throughout this chapter unless clearly stated otherwise. The definitions are reprinted below)) only applicable to Part I.

"Annual CO<sub>2</sub> emission rate" means the maximum potential annual CO<sub>2</sub> emission rate.

"Applicant" has the meaning provided in RCW 80.50-020 and includes an applicant for a permit for a fossil-fueled thermal electric generation facility subject to RCW 70.94.152 and 80.70.020 (1)(b) or (d).

(("Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.))

"Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by ((the council)) EFSEC.

"Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

"CO<sub>2</sub>" means carbon dioxide.

"Cogeneration credit" means the carbon dioxide emissions that ~~((the council, department, or authority))~~ EFSEC or the permitting authority, as appropriate, estimates a stand-alone industrial and commercial facility would ~~((be produced))~~ produce on an annual basis ~~((by a stand-alone industrial and commercial facility))~~ that is equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

"Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

"Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

~~("Council" means the energy facility site evaluation council created by RCW 80.50.030.~~

~~("Department")~~ "Ecology" means the department of ecology.

"EFSEC" means the energy facility site evaluation council.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Independent qualified organization" is an organization identified by ~~((the energy facility site evaluation council))~~ EFSEC as meeting the requirements of RCW 80.70.050.

"Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

"Mitigation project" means one or more of the following:

(a) Projects or actions ~~((that are))~~ implemented by the certificate holder or order of approval holder, directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes, but is not limited to ~~((;))~~:

(i) The use of energy efficiency measures~~((;))~~;

(ii) Clean and efficient transportation measures~~((;))~~;

(iii) Qualified alternative energy resources~~((;))~~;

(iv) Demand side management of electricity consumption~~((;))~~; and

(v) Carbon sequestration programs~~((;))~~.

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the ~~((applicant))~~ facility and approved as part of a carbon dioxide mitigation plan.

"Modification" means the definition in WAC 173-400-030.

"MWe" means megawatts of electricity.

"Order of approval" means an order issued under RCW 70.94.152 with respect to a fossil-fueled thermal electric generation facility subject to ~~((RCW 80.70.020 (1)(b) or (d)))~~ WAC 173-407-030.

"Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

"Permitting authority" means ecology or the local air pollution control authority with jurisdiction over the source.

"Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

"Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

"Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described ~~((under RCW 80.70.020 (1)(a) and (b)))~~ in WAC 173-407-030(1), the amount of carbon dioxide emitted over a thirty-year period based on:

(i) The manufacturer's or designer's guaranteed total net station generating capability~~((;))~~;

(ii) New equipment heat rate~~((;))~~; and

(iii) An assumed sixty percent capacity factor for facilities under ~~((the council's))~~ EFSEC's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, ~~((and))~~ taking into account any enforceable limitations on operational hours or fuel types and use~~((; and))~~.

(b) For a fossil-fueled thermal electric generation facility described ~~((under RCW 80.70.020 (1)(c) and (d)))~~ in WAC 173-407-030(2), the amount of carbon dioxide emitted over a thirty-year period based on:

(i) The proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the ~~((applicant))~~ facility applying for certification or an order of approval ~~((pursuant to RCW 80.70.020 (1)(c) and (d);))~~;

(ii) New equipment heat rate~~((;))~~; and

(iii) An assumed sixty percent capacity factor for facilities under ~~((the council's))~~ EFSEC's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, ~~((and))~~ taking into account any enforceable limitations on operational hours or fuel types and use.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-030 Carbon dioxide mitigation program applicability for Part I.** ~~((1))~~ **Statutory authority for a carbon dioxide mitigation program.** RCW 70.94.892(1) states that *"For fossil-fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generation capability, except for fossil-*

*fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW."*

**(2) Statutory carbon dioxide mitigation program applicability requirements.** RCW 80.70.020 describes the applicability requirements and is reprinted below:

*(1) The provisions of this chapter apply to:*

*(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under RCW 80.50.020 (14)(a), for which an application for site certification is made to the council after July 1, 2004;*

*(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;*

*(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and*

*(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.*

**(3)) (1) New ((facilities)) facility. ((Any)) A fossil-fueled thermal electric generating facility ((is required to)) must mitigate CO<sub>2</sub> emissions ((as described in chapter 80.70 RCW, if)) when the facility meets the following criteria:**

**(a) ((A)) A facility submits a notice of construction application ((was received)) after July 1, 2004;**

**(b) The station-generating capability is ((below 350 MWe and above 25)) between 25 MWe and 350 MWe; and**

**(c) The facility is not a fossil-fueled floating thermal electric generation facility ((subject to regulation by the energy facility site evaluation council)) regulated by EFSEC (100 MWe or more).**

**((4)) (2) Modifying an existing fossil-fueled thermal electric generating ((facilities)) facility. A fossil-fueled thermal electric generating facility seeking to modify the facility or ((any)) an electrical generating unit((s is required to)) must mitigate the ((increase of the emission of CO<sub>2</sub>, as described in RCW 80.70.020, when the following occur)) increased CO<sub>2</sub> emissions when the facility meets the following criteria:**

**(a) ((The)) A facility submits a notice of construction application ((was received)) after July 1, 2004;**

**(b) The unmodified station generating capability is ((more than)) between 25 MWe and ((less than)) 350 MWe;**

**(c) The increase to the facility or units is the greater of the following measures:**

**(i) An increase in station-generating capability of ((more than)) at least 25 MWe; or**

**(ii) An increase in CO<sub>2</sub> emissions output by 15((%)) percent or more;**

**(d) The facility ((or the modification is not under the jurisdiction of the energy facility site evaluation council.**

**~~(5))~~ is not a fossil-fueled floating thermal electric generation facility regulated by EFSEC (100 MWe or more).**

**(3) Examples of fossil-fueled thermal electric generation units. The following are some examples of fossil-fueled thermal electric generating units:**

**(a) Coal, oil, natural gas, or coke fueled steam generating units (boilers) supplying steam to a steam turbine - electric generator;**

**(b) Simple cycle combustion turbine attached to an electric generator;**

**(c) Combined cycle combustion turbine((s)) (with and without duct burners) attached to an electric generator and supplying steam to a steam turbine - electric generator;**

**(d) Coal gasification unit((s)), or similar device((s)), where the synthesis gas produced is used to fuel a combustion turbine, boiler or similar device used to power an electric generator or provide hydrogen for use in fuel cells; or**

**(e) Hydrocarbon reformer emissions where the hydrogen produced is used in fuel cells or other combustion units to produce electricity. Hydrogen used to fuel motor vehicles is not subject to the requirements of this part.**

**AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)**

**WAC 173-407-040 Carbon dioxide mitigation program fees under Part I. Fees can be found in ((chapter 173-455)) WAC 173-455-050.**

**AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)**

**WAC 173-407-050 Calculating total carbon dioxide emissions to be mitigated under Part I. (1) Step 1 ((is to calculate the total quantity of CO<sub>2</sub>. The total quantity of CO<sub>2</sub> is referred to as the maximum potential emissions of CO<sub>2</sub>. The maximum potential emissions of CO<sub>2</sub> is defined as)) - Calculate the annual CO<sub>2</sub> emission rate. Calculate the annual CO<sub>2</sub> emission rate ((is derived by)) using the following formula unless a differing analysis is necessary or appropriate for the electric generating process and type of equipment:**

$$CO_{2rate} = \frac{F_s \times K_s}{2204.6} \times T_s + \frac{F_1 \times K_1}{2204.6} \times T_1 + \frac{F_2 \times K_2}{2204.6} \times T_2 + \frac{F_3 \times K_3}{2204.6} \times T_3 + \dots + \frac{F_n \times K_n}{2204.6} \times T_n$$

where:

$CO_{2rate}$  = ~~((Maximum potential emissions))~~ Annual CO<sub>2</sub> emission rate in metric tons per year

$F_{1 ((-n))}$  to  $F_n$  = Maximum design fuel firing rate in MMBtu/hour calculated as manufacturer or designer's guaranteed total net station generating capability in MWe/hour times the new equipment heat rate in ~~((Btu/MWe))~~ MMBtu/MWe. Determined based on higher heating values of fuel

$K_{1 ((-n))}$  to  $K_n$  = Fuel to CO<sub>2</sub> conversion factor for the fuel(s) being evaluated in lb CO<sub>2</sub>/MMBtu for fuel  $F_1$  to  $F_n$

$T_{1 ((-n))}$  to  $T_n$  = Hours per year fuel  $F_1$  to  $F_n$  is allowed to be used. The default is 8760 hours unless there is a limitation on hours in an order of approval

$F_s$  = Maximum design supplemental fuel firing rate in MMBtu/hour, at higher heating value of the fuel

$K_s$  = Fuel to CO<sub>2</sub> conversion factor for the supplemental fuel being evaluated in lb CO<sub>2</sub>/MMBtu for fuel ~~((F<sub>n</sub>))~~  $E_s$  given fuel

$T_s$  = Hours per year supplemental fuel ~~((F<sub>n</sub>))~~  $E_s$  is allowed. The default is 8760 hours unless there is a limitation on hours in an order of approval

(a) When there are multiple new fossil-fueled electric generating units, the above calculation ~~((with))~~ must be performed for each unit and the ~~((total))~~ annual CO<sub>2</sub> emission~~((s))~~ rate of all units ~~((with))~~ must be summed.

(b) When a unit or facility is allowed to use multiple fuels, the maximum allowed hours on the highest CO<sub>2</sub> producing fuels ~~((with))~~ must be ~~((utilized))~~ used for each fuel until the total of all hours per fuel add up to the allowable annual hours.

(c) When a new unit or facility is allowed to use multiple fuels without restriction in its ~~((approval order(s)))~~ order of approval, this calculation ~~((with))~~ must be performed assuming that the fuel with the highest CO<sub>2</sub> emission rate is used 100~~((%)~~) percent of the time.

(d) When the annual operating hours are restricted for any reason, the total of ~~((all T<sub>1-n</sub> hours))~~ T<sub>1</sub> to T<sub>n</sub> equals the annual allowable hours of operation in the order of approval.

(e) Fuel to CO<sub>2</sub> conversion factors ~~((derived from the EPA's AP-42, Compilation of Air Pollutant Emission Factors))~~

Fuel	$K_n$ lb/MMBtu
#2 oil	158.16
#4 oil	160.96
#6 oil	166.67
Lignite	287.50
Sub-bituminous coal	267.22
Bituminous coal, low volatility	232.21
Bituminous coal, medium volatility	241.60
Bituminous coal, high volatility	262.38
Natural gas	117.6
Propane	136.61
Butane	139.38
Petroleum coke	242.91
Coal coke	243.1
Other fossil fuels	Calculate based on carbon content of the fossil fuel and application of the gross heat content (higher heating value) of the fuel
Nonfossil fuels	00.00))

For  $K_1$  to  $K_n$  and  $K_s$  in the formula in subsection (1) of this section, use the CO<sub>2</sub> emission factors for fossil fuels in 40 C.F.R. Part 98, Table C-1, except that the values for nonfossil fuels must be 0.00 lb/MMBtu (in effect on the date in WAC 173-407-006).

(2) Step 2 - ~~((Insert the annual CO<sub>2</sub> rate to))~~ Determine the total carbon dioxide emissions ((to be mitigated. The formula below includes specifications that are part of the total carbon dioxide definition)). You must use the following formula to determine total carbon dioxide emissions:

$$\text{Total CO}_2 \text{ Emissions} = CO_{2rate} \times 30 \times 0.6$$

where:

$CO_{2rate}$   $\equiv$  Annual CO<sub>2</sub> emission rate in metric tons per year

30  $\equiv$  Thirty-year period

0.6  $\equiv$  Assumed capacity factor

(3) Step 3 - Determine ~~((and apply))~~ the cogeneration credit (if any).

(a) Where the cogeneration unit or facility qualifies for cogeneration credit, the cogeneration credit is the annual CO<sub>2</sub> emission rate (in metric tons per year) ((and is calculated as shown below or similar method)). You must use the follow-

ing formula or a similar method to determine the annual CO<sub>2</sub> cogeneration credit:

$$CO_{2credit} = \frac{H_s}{2204.6} \times (K_a) \div n$$

where:

- CO<sub>2credit</sub> = The annual CO<sub>2</sub> cogeneration credit ~~((for cogeneration))~~ in metric tons/year((-))
- H<sub>s</sub> = Annual heat energy supplied by the cogeneration plant to the "steam host" per the contract or other binding obligation/agreement between the parties in MMBtu/yr as substantiated by an engineering analysis((-))
- K<sub>a</sub> = The time weighted ~~((average CO<sub>2</sub> emission rate constant))~~ fuel to CO<sub>2</sub> conversion factor for the cogeneration plant in lb CO<sub>2</sub>/MMBtu supplied. The time weighted average is calculated similarly to the above method described in subsection (1) of this section((-))

n = Efficiency of new boiler that would provide the same quantity of thermal energy. Assume n = 0.85 unless ~~((applicant))~~ facility provides information supporting a different value((-))

(b) Calculate the metric tons of the cogeneration credit over the thirty-year period.

$$\text{Cogeneration Credit} = CO_{2credit} \times 30$$

(4) Step 4 - ((Apply the mitigation factor.

~~(a) RCW 80.70.020(4) states that "Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility."~~

(b)) Determine the mitigation quantity. Determine the CO<sub>2</sub> emissions mitigation quantity ((is determined by)) using the following formula:

$$\text{Mitigation Quantity} = \text{Total CO}_2 \text{ Emissions} \times 0.2 - \text{Cogeneration Credit}$$

where:

- Mitigation quantity = The total CO<sub>2</sub> emissions to be mitigated in metric tons
- ~~((CO<sub>2</sub>rate~~ = ~~The annual maximum CO<sub>2</sub> emissions from the generating facility in tons/year))~~
- 0.2 = The mitigation factor in RCW 80.70.020(4)

emissions related to the increase in operating hours are subject to the CO<sub>2</sub> mitigation program requirements;

(c) The annual CO<sub>2</sub> emission((s)) rate (CO<sub>2</sub>rate) in subsection (1) of this section is the difference between the pre-modification condition and the postmodification condition, but using the like new heat rate for the combustion equipment; and

(d) ((The)) A cogeneration credit may be used, ((but)) only if it is a new cogeneration credit((, not a cogeneration agreement or arrangement)) established ((prior to)) after July 1, 2004((, or used in a prior CO<sub>2</sub> mitigation evaluation)).

(5) Additional restrictions for a modification((s)) to an existing facility not involving ((installation of)) installing new generating units. Calculate the quantity of CO<sub>2</sub> to be mitigated ((is calculated by the same methods used for the new generating units)) using the method in subsections (1) through (4) of this section with the following restrictions:

(a) The quantity of CO<sub>2</sub> subject to mitigation is ((only that)) limited to the emissions resulting from the modification and does not include the ((CO<sub>2</sub>)) emissions occurring prior to the modification;

(b) An increase in operating hours or other operational limitations established in an order of approval is not an exempt modification under this regulation. However, only

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-060 Carbon dioxide mitigation plan requirements and options under Part I. (1) ((Once the total carbon dioxide emissions mitigation quantity is calculated, what is next?)) Mitigation plan requirements.**

(a) The facility must mitigate ((that level of carbon dioxide)) the quantity of CO<sub>2</sub> emissions determined by WAC 173-407-050 (4) or (5) as applicable. A CO<sub>2</sub> mitigation plan ((is required and)) must be approved as part of the order of approval. ((RCW 80.70.020 (2)(b) states that "For fossil-fueled thermal electric generation facilities not under juris-

*diction of the council, the order of approval shall require an approved carbon dioxide mitigation plan.*" A mitigation plan is a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits (RCW 80.70.010).

(2) ~~What are the mitigation plan options?~~ The options are identified in RCW 80.70.020(3), which states that ")

(b) The facility must implement the mitigation plan based on the schedule in the order of approval. A facility may request an extension of the schedule by submitting a written request to the permitting authority before applicable deadline(s). The request must propose a revised schedule and document why more time is needed to implement the mitigation plan.

(2) Mitigation plan options. An applicant for a fossil-fueled thermal electric generation facility ~~(shall)~~ must include one or a combination of the following ~~((carbon dioxide))~~ CO<sub>2</sub> mitigation options as part of its mitigation plan:

- (a) Payment to a third party to provide mitigation;
- (b) Direct purchase of permanent carbon credits; or

$$\text{Total payment amount} = \text{Mitigation rate} \times \text{Mitigation quantity}$$

(b) An applicant may choose between a lump sum payment ~~((or))~~ and partial payments over a period of five years. ~~((The lump sum payment is described in RCW 80.70.020 (6)(a) and (b).))~~

(i) The lump sum payment amount ~~((is the mitigation quantity multiplied by the per ton mitigation rate. The entire payment amount is due))~~ must be paid to the independent qualified organization no later than one hundred twenty days after the start of commercial operation.

~~((The alternative to a one-time payment is a partial payment described in RCW 80.70.020 (6)(e). Under this alternative,))~~ (ii) The partial payments must be paid to the independent qualified organization in five equal payments over five years. The first twenty percent of the total payment ~~((is due))~~ must be paid to the independent qualified organization no later than one hundred twenty days after the start of commercial operation. A payment of the same amount (or an adjusted amount if the rate is changed under RCW 80.70.020 (5)(a)) ~~((is due on))~~ must be paid by the anniversary date of the initial payment for the next four consecutive years. ~~((In addition, the applicant is required to))~~ The facility must provide a letter of credit or comparable security for the remaining 80((%)) percent at the time of the first payment. The letter of credit ~~((or))~~ comparable security ~~((must))~~ include possible rate changes.

(4) ~~((What are the requirements of the permanent carbon credits option? RCW 80.70.030 identifies the criteria and specifies that these credits cannot be resold without approval from the local air authority having jurisdiction or ecology where there is no local air authority. The))~~ Requirements of the permanent carbon credits option. The applicant must acquire permanent carbon credits equaling the mitigation quantity as calculated in WAC 173-407-050(4), unless the power plant permanently ceases operation. The permanent carbon credits must meet the following criteria ~~((of RCW 80.70.030(1) are as follows))~~:

(c) Investment in applicant-controlled ~~((carbon dioxide))~~ CO<sub>2</sub> mitigation projects, including combined heat and power (cogeneration).~~(("))~~

(3) ~~((What are the requirements of the payment to a third party option? The payment to a third party option requirements are found in RCW 80.70.020 (5) and (6). Subsection (5) identifies the mitigation rate for this option and describes the process for changing the mitigation rate. Subsection (6) describes the payment options.))~~ Requirements of the payment to a third-party option.

(a) The initial mitigation rate is \$1.60 per metric ton of ~~((carbon dioxide))~~ CO<sub>2</sub> to be mitigated. ~~((If there is))~~ For a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit. This rate will change when ~~((the energy facility site evaluation council))~~ EFSEC adjusts it through the process described in RCW 80.70.020 (5)(a) and (b).~~((The total payment amount = mitigation rate x mitigation quantity)).~~

(a) Credits must derive from real, verified, permanent, and enforceable ~~((carbon dioxide or carbon dioxide))~~ CO<sub>2</sub> or CO<sub>2</sub> equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; ~~((and))~~

(c) The credits may not have been used for other ~~((carbon dioxide))~~ CO<sub>2</sub> mitigation projects; and

(d) The credits purchased for CO<sub>2</sub> mitigation must not be resold unless approved by the permitting authority. The permitting authority must determine the permanent carbon credits to be resold are offset by other CO<sub>2</sub> mitigation method(s). Facilities that cease operation may sell their carbon credits without replacement.

(5) ~~((What are the requirements for the applicant controlled mitigation projects option? RCW 80.70.040 identifies the requirements for applicant controlled mitigation projects. Subsections (1) through (5) specify the criteria.))~~ Applicant controlled mitigation projects option. The facility may invest directly in mitigation projects. The direct investment cost of the applicant controlled mitigation project, including funds used for selection, monitoring, and evaluation of mitigation projects, cannot be required by ~~((ecology or the local))~~ the permitting authority to exceed the cost of ~~((making a lump sum))~~ total payment to a third party per WAC 173-407-060(3).

The applicant controlled mitigation project must be:

(a) ~~((Implemented through mitigation projects))~~ Conducted directly by ~~((;))~~ or under the control of ~~((;))~~ the order of approval holder.

(b) Approved by the permitting authority ~~((having jurisdiction or the department where there is no local air authority and incorporated))~~ and included as a condition of the ~~((proposed))~~ order of approval.

(c) ~~((Fully in place within a reasonable time))~~ Operational within one year after the start of commercial operation. Failure to implement an approved mitigation plan is subject

to enforcement under ~~((chapter 70.94 RCW))~~ WAC 173-407-080.

(d) The order of approval holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects, and the management and enforcement of contracts.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-070 Carbon dioxide mitigation option statement and mitigation plan approval under Part I.** ~~((Applicants must provide the department or authority with a statement selecting the mitigation option(s) at the time the application is submitted.))~~ The notice of construction application to the permitting authority must indicate the selected mitigation option(s).

(2) Applicants ~~((choosing to use the))~~ using payment to an independent qualified organization (a third party) or the permanent carbon credit option must provide ~~((the department or the authority, as appropriate, with))~~ the documentation to the permitting authority to show how the requirements will be satisfied before an order ~~((of))~~ of approval ~~((will))~~ can be issued.

(3) Applicants ~~((seeking to use))~~ using the ~~((applicant))~~ facility controlled mitigation project~~(s)~~ option must submit the entire mitigation plan to the ~~((department or the))~~ permitting authority. The ~~((department or authority having jurisdiction))~~ permitting authority will review the plan ~~((Under RCW 70.94.892 (2)(b), the review criteria is based on whether the mitigation plan is consistent))~~ for consistency with the requirements of Part I of this chapter ~~((80.70 RCW)).~~

(4) Upon completing the review ~~((phase)),~~ the ~~((department or the authority having jurisdiction))~~ permitting authority must approve or deny the mitigation plan.

(5) An approved mitigation plan ~~((s))~~ must become part of the order of approval.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-080 Enforcement under Part I.** ~~((Applicants or facilities))~~ A facility violating the ~~((carbon dioxide))~~ CO<sub>2</sub> mitigation program requirements ~~((are))~~ is subject to the enforcement provisions of chapter 70.94 RCW.

## PART II

**GREENHOUSE ~~((GASES))~~ GAS EMISSIONS PERFORMANCE STANDARD AND SEQUESTRATION PLANS AND PROGRAMS ~~((FOR BASELOAD ELECTRIC GENERATION FACILITIES IMPLEMENTING CHAPTER 80.80 RCW))~~**

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-100 Policy and purpose of Part II.** ~~((It is the intent of))~~ The legislature ~~((, under chapter 80.80 RCW, to establish))~~ established statutory goals for the statewide

reduction of greenhouse ~~((gases))~~ gas emissions. The legislature further intends by chapter 80.80 RCW to authorize immediate actions in the electric power generation sector for the reduction of greenhouse ~~((gases))~~ gas emissions.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-110 Definitions to Part II and Part III.** The following definitions apply when these terms are used in the provisions of Part II and Part III of this chapter.

"Average available greenhouse ~~((gases))~~ gas emissions output" means the level of greenhouse ~~((gases))~~ gas emissions as surveyed and determined by the energy policy division of the department of ~~((community, trade, and economic development))~~ commerce under RCW 80.80.050.

"Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation. For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale.

"Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent. ~~((For a cogeneration facility, the sixty percent annual capacity factor applies to only the electrical production intended to be supplied for sale.))~~ For purposes of Part II and Part III of this rule, "designed" means originally specified by the design engineers for the power plant or generating units (such as simple cycle combustion turbines) installed at a power plant; and "intended" means allowed for by the current permits for the power plant, recognizing the capability of the installed equipment or intent of the owner or operator of the power plant at the time of original permitting.

~~((Baseload electric cogeneration facility" means a cogeneration facility that provides baseload electric generation.))~~

"Baseload electric generation facility" means a power plant that provides baseload electric generation.

"Benchmark" means a planned quantity of the greenhouse gases to be sequestered each calendar year at a sequestration facility as identified in the sequestration plan or sequestration program.

"Bottoming-cycle cogeneration facility" means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electrical power production.

"Change in ownership" as related to cogeneration plants means a new ownership interest in the electric generation portion of the cogeneration facility or unit.

"Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards in RCW 80.80.040 (3)(c).

"Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets Federal Energy Regulatory Commission standards for qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Sec. 824a-3), as amended. In general, a cogeneration

facility is comprised of equipment and processes which through the sequential use of energy are used to produce electric energy and useful thermal energy (such as heat or steam) that is used for industrial, commercial, heating, or cooling purposes.

"Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

"Commence commercial operation" means, in regard to a unit serving an electric generator, to have begun to produce steam or other heated medium, or a combustible gas used to generate electricity for sale or use, including test generation.

~~("Commission" means the Washington utilities and transportation commission.)~~

"Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

~~("Department" or)~~ "Ecology" means the department of ecology.

"Electric generating unit" (EGU) is the equipment required to convert the thermal energy in a fuel into electricity. In the case of a steam electric generation unit, the EGU consists of all equipment involved in fuel delivery to the plant site, as well as individual boilers, any installed emission control equipment, and any steam turbine/generators dedicated to generating electricity. Where a steam turbine generator is supplied by two or more boiler units, all boilers contributing to that steam turbine/generator comprise a single electric generating unit. All combustion units/boilers/combined cycle turbines that produce steam for use in a single steam turbine/generator unit are part of the same electric generating unit.

Examples:

(a) For an integrated gasification combined cycle combustion turbine plant, the EGU consists of all equipment involved in fuel delivery to the unit, as well as all equipment used in the fuel conversion and combustion processes, any installed emission control equipment, and all equipment used for the generation of electricity.

(b) For a combined cycle natural gas fired combustion turbine, the EGU begins at the point where natural gas is delivered to the plant site and ends with the generation of electricity from the combustion turbine and from steam produced and used on a steam turbine.

(c) An EGU also includes fuel cells fueled by hydrogen produced:

(i) In a reformer utilizing nonrenewable fuels; or

(ii) By a gasifier producing hydrogen from nonrenewable fuels.

"Electricity from unspecified sources" means electricity that is to be delivered in Washington pursuant to a long-term financial commitment entered into by an electric utility and

whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty.

"EFSEC" means the energy facility site evaluation council.

"Electric utility" means an electrical company or a consumer-owned utility.

"Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

"EPA" means Environmental Protection Agency.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

"Fuel feed stock" means any renewable, biological material that can be used directly as a fuel, or converted to another form of fuel or energy product.

"GHG EPS" means greenhouse gas emissions performance standard.

"Governing board" means the board of directors or legislative authority of a consumer-owned utility.

"Greenhouse (~~gases~~) gas" or "GHG" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

"Modification" means the definition in WAC 173-400-030.

"MWh" means megawatt-hour electricity.

"MWh<sub>eq</sub>" means megawatt-hour equivalent electrical energy of useful thermal energy output. 1 MWh<sub>eq</sub> = 3.413 million Btu of thermal energy.

"New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

(a) Five percent of the market value of the power plant or cogeneration facility; or

(b) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility.

"Permanent sequestration" means the retention of greenhouse gases in a containment system using a method that is in accordance with standards approved by ~~(the department)~~ ecology and that creates a high degree of confidence that substantially ninety-nine percent of the greenhouse gases will remain contained for at least one thousand years.

"Permitting authority" means ecology or the local air pollution control authority with jurisdiction over the source.

"Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

"Power plant" means a facility for the generation of electricity that is permitted as a single plant by ~~((the energy facility site evaluation council or a local jurisdiction))~~ a jurisdiction inside or outside the state. A power plant may be comprised of one or more individual electrical generating units, each unit of which can be operated or owned separately from the other units.

"Regulated greenhouse ~~((gases))~~ gas emissions" is the mass of carbon dioxide emitted plus the mass of nitrous oxide emitted plus the mass of methane emitted. Regulated greenhouse ~~((gases))~~ gas emissions include carbon dioxide produced by a sulfur dioxide control system such as a wet limestone scrubber system.

"Renewable fuel" means:

- (a) Landfill gas;
- (b) Biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- (c) By-products of pulping or wood manufacturing processes ~~((;))~~ including, but not limited to, bark, wood chips, sawdust, and lignin in spent pulping liquors; ~~((or))~~
- (d) Gas from sewage treatment facilities; or
- (e) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006.

"Renewable resources" means electricity generation facilities fueled by renewable fuels plus electricity generation facilities fueled by:

- (a) Water;
- (b) Wind;
- (c) Solar energy;
- (d) Geothermal energy; or
- (e) Ocean thermal, wave, or tidal power.

"Sequential use of energy" means:

- (a) For a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts ~~((in))~~ to support a thermal application or process to conform to the requirements of the operating standard; or
- (b) For a bottoming-cycle cogeneration facility, the use of reject heat from a thermal application or process, at least some of which is then used for power production.

"Sequestration plan" means a comprehensive plan describing how a plant owner or operator will comply with the emissions performance standard by means of sequestering greenhouse gases, where the sequestration will start after electricity is first produced, but within five years of the start of commercial operation.

"Sequestration program" means a comprehensive plan describing how a baseload electric generation plant's owner or operator will demonstrate compliance with the emissions performance standard at start of commercial operation and continuing unchanged into the future. The program is a description of how the facility meets the emissions performance standard based on the characteristics of the baseload electric generation facility or unit or by sequestering greenhouse ~~((gases))~~ gas emissions to meet the emissions perfor-

mance standard with the sequestration starting on or before the start of commercial operation.

"Supplementary firing" means an energy input to:

- (a) A cogeneration facility used only in the thermal process of a topping-cycle cogeneration facility;
- (b) The electric generating process of a bottoming-cycle cogeneration facility; or
- (c) Any baseload electric generation unit to temporarily increase the thermal energy that can be converted to electrical energy.

"Topping-cycle cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful electrical power output, and at least some of the reject heat from the power production process is then used to provide useful thermal energy.

"Total energy input" means the total energy supplied by all fuels used to produce electricity in a baseload electric generation facility or unit.

"Total energy output" of a ~~((topping cycle))~~ cogeneration facility or unit is the sum of the useful electrical power output and useful thermal energy output.

"Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

- (a) Routine or necessary maintenance;
- (b) Installation of emission control equipment;
- (c) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or
- (d) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

"Useful energy output" of a cogeneration facility means the electric or mechanical energy made available for use, exclusive of any such energy used in the power production process.

"Useful thermal energy output" of a cogeneration facility means the thermal energy:

- (a) That is made available to and used in an industrial or commercial process (minus any heat ~~((contained))~~ in condensate return and/or makeup water);
- (b) That is used in a heating application (e.g., space heating, domestic hot water heating); ~~((or))~~
- (c) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller); or
- (d) That is used to drive a chemical conversion process (i.e., thermal energy to convert limestone to lime or to produce cement clinker from limestone and other materials).

"UTC" means the utilities and transportation commission.

"Waste gas" is refinery gas and other fossil fuel derived gases with a heat content of more than 300 Btu/standard cubic foot. Waste gas does not include gaseous renewable energy sources.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-120** (~~(Facilities subject to the)~~) **Greenhouse ((gases)) gas emissions performance standard applicability for Part II.** ~~((1) This rule is applicable to all baseload electric generation facilities and units and baseload electric cogeneration facilities and units that:~~

~~(a) Are new and are permitted for construction and operation after June 30, 2008, and that utilize fossil fuel or nonrenewable fuels for all or part of their fuel requirements.~~

~~(b) Are existing and that commence operation on or before June 30, 2008, when the facility or unit's owner or operator engages in an action listed in subsection (3) or (4) of this section.~~

~~(2) This rule is not applicable to any baseload electric generation facility or unit or baseload electric cogeneration facility or unit that is designed and intended to utilize a renewable fuel to provide at least ninety percent of its total annual heat input.~~

~~(3) A baseload electric generation facility or an individual electric generating unit at a baseload electric generation facility is required to meet the emissions performance standard in effect when:~~

~~(a) The new baseload electric generation facility or new electric generating unit at an existing baseload electric generation facility is issued a notice of construction approval or a site certification agreement;~~

~~(b) The existing facility or a unit is upgraded; or~~

~~(c) The existing facility or a unit is subject to a new long-term financial commitment.~~

~~(4) A baseload electric cogeneration facility or unit is required to meet the emissions performance standard in effect when:~~

~~(a) The new baseload electric cogeneration facility or new baseload electric cogeneration unit is issued a notice of construction approval or a site certification agreement;~~

~~(b) The existing facility or unit is upgraded; or~~

~~(c) The existing facility or unit is subject to a change in ownership.~~

~~(5) A new baseload electric generation facility or unit or new baseload electric cogeneration facility or unit becomes an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit the day it commences commercial operation.)~~ (1) Starting July 1, 2008, a baseload electric generation facility or unit or baseload electric cogeneration facility or unit located in Washington is subject to the GHG EPS each time it meets one of the following conditions:

(a) Commence operation;

(b) New ownership interest;

(c) New or renewed long-term financial commitment; or

(d) Upgraded.

(2) Starting July 1, 2008, a baseload electric generation facility or unit or baseload electric cogeneration facility or unit is subject to the GHG EPS when it enters into a long-term financial commitment to serve power to Washington customers.

(3) Exceptions to the conditions in subsections (1) and (2) of this section are as follows:

(a) A baseload electric cogeneration facility or unit fueled by natural gas or waste gas or a combination of the two fuels that was in operation before July 1, 2008, is exempt from meeting the GHG EPS until:

(i) Change in ownership; or

(ii) Upgraded.

(b) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit fueled by at least 90 percent renewable fuels, on an annual heat input basis, is deemed to be in compliance with the GHG EPS;

(c) A baseload electric generation facility or unit powered exclusively by renewable resources is deemed to be in compliance with the GHG EPS;

(d) A new or renewed long-term financial commitment with the Bonneville power administration is exempt from meeting the GHG EPS;

(e) Long-term purchase of coal transition power and the coal-fired power plant providing the power are exempt from meeting the GHG EPS as provided by RCW 80.80.040 (3)(c).

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-130 Emissions performance standard under Part II.** ~~((1) Beginning July 1, 2008, all baseload electric generation facilities and units and baseload electric cogeneration facilities and units subject to WAC 173-407-120 are not allowed to emit to the atmosphere regulated greenhouse gases at a rate greater than one thousand one hundred pounds per megawatt-hour, annual average.~~

~~(2) All baseload electric generation facilities and units in operation on or before June 30, 2008, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new long-term financial commitment.~~

~~(3) All baseload electric cogeneration facilities and units in operation on or before June 30, 2008, and operating exclusively on natural gas, waste gas, a combination of natural and waste gases, or a renewable fuel, are deemed to be in compliance with the emissions performance standard until the facility or unit is subject to a new ownership interest or is upgraded. For purposes of this section, exclusive use of renewable fuel shall mean at least ninety percent of total annual heat input by a renewable fuel.~~

~~(4))~~ (1) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit must comply with the GHG EPS in subsection (2) of this section in effect at the time when the facility or unit triggers the applicability in WAC 173-407-120.

(2) GHG EPS.

Table 1  
GHG EPS by Time Period

<u>GHG EPS lb GHG/MWh</u>	<u>First Applicable Date</u>	<u>Last Applicable Date</u>
<u>1,100</u>	<u>July 1, 2008</u>	<u>The day before the rule effective date, March 2018</u>

<u>GHG EPS lb GHG/MWh</u>	<u>First Applicable Date</u>	<u>Last Applicable Date</u>
<u>970</u>	<u>Rule effective date, March 2018</u>	<u>Determined by chapter 194-26 WAC</u>
<u>Chapter 194-26 WAC (Starting rule effective date, March 2018)*</u>		

\* Commerce reviews and, if appropriate, updates the GHG EPS every five years as directed by RCW 80.80.050.

(3) Compliance with the ~~((emissions performance standard))~~ GHG EPS may be through the use of:

(a) ~~((Use of))~~ Fuel~~((s))~~ and power plant design~~((s that comply with the emissions performance standard without need for greenhouse gases emission controls))~~; or

(b) ~~((Use of greenhouse gases))~~ GHG emission control~~((s))~~ and ~~((greenhouse gases))~~ sequestration method~~((s))~~ meeting the requirements of WAC 173-407-220 or 173-218-115, as appropriate.

~~((5) The greenhouse gases emissions performance standard in subsection (1) of this section applies to all baseload electric generation for which electric utilities enter into long-term financial commitments on or after July 1, 2008.))~~

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-140 Calculating greenhouse ~~((gases))~~ gas emissions and determining compliance for a baseload electric generation ~~((facilities))~~ facility or unit under Part II.** (1) The owner or operator of a baseload electric generation facility or unit ~~((that))~~ must collect the following data to demonstrate compliance with the ~~((emissions performance standard))~~ GHG EPS in WAC 173-407-130~~((1))~~ shall collect the following data:

(a) ~~((Fuels and fuel feed stocks.~~

(i) ~~All fuels and fuel feed stocks used to provide energy input to the baseload electric generation facility or unit.~~

(ii) ~~Fuel usage and heat content, which are to be monitored, and reported as directed by WAC 173-407-230.)~~ The usage and heat content of fuels and fuel feed stocks that provide energy input to the baseload electric generation facility or unit. These data must be monitored and reported as directed by WAC 173-407-160.

(b) Electrical output in MWh as measured and recorded per WAC ~~((173-407-230))~~ 173-407-160.

(c) Regulated ~~((greenhouse gases))~~ GHG emissions in pounds/MMBtu from the baseload electric generation facility or unit as monitored, reported and calculated in WAC ~~((173-407-230))~~ 173-407-160.

(d) Adjustment~~((s))~~ for use of renewable resources. If the owner or operator of a baseload electric generation facility or unit adjusts its ~~((greenhouse gases))~~ GHG emissions to account for the use of renewable resources, ~~((greenhouse gases))~~ GHG emissions are reduced based on the ratio of the annual heat input from ~~((all fuels and fuel feed stocks))~~

renewable resources and the annual heat input from ~~((use of nonrenewable))~~ all fuels and fuel feed stocks. ~~((Such))~~ This adjustment ~~((with))~~ must be based on records of fuel usage and representative heat contents approved by ecology.

(e) Adjustment for GHG emissions that are sequestered. All GHG emissions that are permanently sequestered through an approved sequestration method(s) during the calendar year can be subtracted from the total pounds of GHG emitted during that year.

(2) By January 31<sup>st</sup> of each year, the owner or operator of ~~((each))~~ a baseload electric generation facility or unit subject to the ~~((monitoring and))~~ compliance demonstration requirements of Part II and Part III of this rule ~~((with))~~ must:

(a) Use the data collected under subsection (1) of this section to calculate the pounds of regulated ~~((greenhouse gases))~~ GHG emissions emitted per MWh of electricity produced during the prior calendar year by dividing the total regulated ~~((greenhouse gases))~~ GHG emissions in pounds by the total ~~((MWh))~~ electricity produced in MWh in that year; and

(b) Submit that calculation and all supporting information to ecology.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-150 Calculating greenhouse ~~((gases))~~ gas emissions and determining compliance for a baseload electric cogeneration ~~((facilities))~~ facility or unit under Part II.** (1) ~~((To use this section for determining compliance with the greenhouse gases emissions performance standard.))~~ This section applies to a facility ~~((must have))~~ or unit certified to the Federal Energy Regulatory Commission ~~((FERC))~~ under the provisions of 18 C.F.R. Part 292, Subpart B as a qualifying cogeneration facility ~~((in effect on the date in WAC 173-407-006)).~~

(2) The owner or operator of a baseload electric cogeneration facility or unit that must demonstrate compliance with the ~~((emissions performance standard))~~ GHG EPS in WAC 173-407-130~~((1))~~ shall must collect the following data:

(a) ~~((Fuels and fuel feed stocks.~~

(i) ~~All fuels and fuel feed stocks used to provide energy input to the baseload electric cogeneration facility or unit.~~

(ii) ~~Fuel and fuel feed stocks usage and heat content, which are to be monitored, and reported as directed by WAC 173-407-230.)~~ The usage and heat content of fuels and fuel feed stocks provide energy input to the baseload electric cogeneration facility or unit. These data must be monitored and reported as directed by WAC 173-407-160.

(b) Electrical output in MWh as measured and recorded per WAC ~~((173-407-230))~~ 173-407-160.

(c) All useful thermal energy and useful energy used for nonelectrical generation uses in MMBtu must be converted to units of ~~((megawatts energy equivalent (MWeq)))~~ MWh<sub>eq</sub> by using the conversion factor of 3.413 million British thermal units per megawatt hour (MMBtu/MWh).

(d) Regulated ~~((greenhouse gases))~~ GHG emissions in pounds/MMBtu from ~~((the))~~ a baseload electric cogeneration facility or unit as monitored, reported and calculated in WAC ~~((173-407-230))~~ 173-407-160.

(e) Adjustments for use of renewable resources. If the owner or operator of a baseload electric cogeneration facility or unit adjusts its ~~((greenhouse gases))~~ GHG emissions to account for the use of renewable resources, the ~~((greenhouse gases))~~ GHG emissions are reduced based on the ratio of the annual heat input from ~~((all fuels and fuel feed stocks))~~ renewable resources and the annual heat input from use of ~~((nonrenewable))~~ all fuels and fuel feed stocks. ~~((Such))~~ This adjustment ~~((will))~~ must be based on records of fuel usage and representative heat contents approved by ecology.

(f) Adjustment for GHG emissions that are sequestered. All GHG emissions that are permanently sequestered through an approved sequestration method(s) during the calendar year can be subtracted from the total pounds of GHG emitted during that year.

(3) Bottoming-cycle cogeneration facilities. Ecology and the facility must jointly develop the formula to determine compliance of a bottoming-cycle cogeneration facility or unit with the ~~((emissions performance standard will be jointly developed by ecology and the facility))~~ GHG EPS. To the extent possible, the facility-specific formula must be based on the one for topping-cycle facilities identifying the amount of energy converted to electricity, thermal losses, and energy from the original fuel(s) used to provide useful thermal energy in the industrial process. The formula ~~((should))~~ must be specific to the ~~((installed))~~ equipment installed, ~~((other))~~ thermal energy uses ~~((in the facility))~~, and specific operating conditions of the facility.

(4) Topping-cycle cogeneration facilities. To demonstrate compliance with the ~~((emissions performance standard))~~ GHG EPS, a topping-cycle facility or unit must:

(a) Determine annual electricity produced in MWh.

(b) Determine the annual electrical energy equivalent of the useful thermal energy output in MWh<sub>eq</sub>.

(c) Determine the annual regulated ~~((greenhouse gases))~~ GHG emissions produced in pounds.

(5) By January 31<sup>st</sup> of each year, the owner or operator of ~~((each))~~ a baseload electric cogeneration facility or unit subject to the ~~((monitoring and))~~ compliance demonstration requirements of Part II and Part III of this rule ~~((will))~~ must:

(a) Calculate the pounds of regulated ~~((greenhouse gases))~~ GHG emissions emitted per MWh of electricity produced during the prior calendar year by dividing the ~~((regulated greenhouse gases))~~ total regulated GHG emissions in pounds by the sum of the electricity produced in MWh and thermal energy output in MWh<sub>eq</sub> ~~((produced))~~ in that year; and

(b) Submit that calculation and all supporting information to ecology.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-200 Requirements for and timing of sequestration plan or sequestration program submittals under Part II.** (1) The owner or operator of a facility or unit that does not meet the applicable EPS in WAC 173-407-130 must submit a sequestration plan ~~((for a source that))~~ when they begin(s) sequestration after the start of commercial

operation ~~((shall be submitted when))~~ and engage in an action listed in (a) through (d) of this subsection:

~~((A site certification application is submitted to EFSEC for a new baseload electric generation facility or baseload electric cogeneration facility or new unit at an existing baseload electric generation facility or baseload electric cogeneration facility;~~

~~((b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;~~

~~((c)) The owner or operator of a new facility or unit submits a notice of construction application ~~((is submitted to ecology or a local authority for a new baseload electric generation facility or baseload electric cogeneration facility or unit at a baseload electric generation facility or baseload electric cogeneration facility))~~ to the permitting authority;~~

~~((d)) (b) The owner or operator of an existing facility or unit submits a notice of construction application ~~((is submitted to ecology or a local))~~ to the permitting authority for an upgrade ~~((to an existing baseload electric generation facility or unit or an existing baseload electric cogeneration facility or unit))~~ and the upgrade is not ~~((an))~~ exempt ~~((upgrade));~~~~

~~((e) A baseload electric generation)) (c) The owner or operator of a facility or unit ~~((or baseload electric cogeneration facility or unit enters))~~ signs a new long-term financial commitment with an electric utility to provide baseload power and the facility or unit does not comply with the ~~((emissions performance standard))~~ GHG EPS in effect at the time the new long-term financial commitment occurs; or~~

~~((f)) (d) A qualifying new ownership interest ~~((change))~~ occurs and the facility or unit does not comply with the ~~((emissions performance standard))~~ GHG EPS in effect at ~~((the))~~ that time ~~((the change in ownership occurs)).~~~~

(2) The owner or operator of a facility or unit that does not meet the applicable GHG EPS in WAC 173-407-130 must submit a sequestration program ~~((for a source that))~~ to ecology when they begin(s) sequestration on or before the start of commercial operation ~~((is required to be submitted when))~~ and engage in an action listed in the following subsections:

~~((A site certification application is submitted to EFSEC for new baseload electric generation facility or unit or baseload electric cogeneration facility or unit;~~

~~((b) A site certification application is submitted to EFSEC for an upgrade to an existing baseload electric generation facility or unit or baseload electric cogeneration facility or unit that has a site certificate and the upgrade is not an exempt upgrade;~~

~~((c)) The owner or operator of a new facility or unit submits a notice of construction application ~~((is submitted to ecology or a local authority for a new baseload electric generation facility or unit or baseload electric cogeneration facility or unit))~~ to the permitting authority;~~

~~((d)) (b) The owner or operator of an existing facility or unit submits a notice of construction application ~~((is submitted to ecology or a local))~~ to the permitting authority for an upgrade ~~((to an existing baseload electric generation facility~~~~

or unit or baseload electric cogeneration facility or unit)) and the upgrade is not an exempt upgrade;

~~((e) A baseload electric generation))~~ (c) The owner or operator of a facility or unit ~~((or baseload electric cogeneration facility or unit enters))~~ signs a new long-term financial commitment with an electric utility to provide baseload power if the facility or unit does not comply with the ~~((emissions performance standard))~~ GHG EPS in effect at the time the new long-term financial commitment occurs; or

~~((f))~~ (d) A qualifying new ownership interest ~~((change))~~ occurs and the facility or unit does not comply with the ~~((emissions performance standard))~~ GHG EPS in effect at ~~((the time the change in ownership occurs))~~ that time.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-210 Types of permanent sequestration under Part II.** ~~((Specific))~~ (1) Requirements for permanent geologic sequestration of ~~((greenhouse gases can be found))~~ GHG are in WAC 173-218-115.

(2) Requirements for ~~((approval of sequestration plans or sequestration programs for other))~~ permanent nongeologic ~~((types of permanent))~~ sequestration ~~((containment systems))~~ of GHG are ~~((found))~~ in WAC 173-407-220.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-220 Requirements for nongeologic permanent sequestration plans and sequestration programs under Part II.** ~~((In order to meet the emissions performance standard, all))~~ A baseload electric generation ~~((facilities or individual units))~~ facility or unit or baseload electric cogeneration facility or unit that ~~((are))~~ is subject to ~~((this rule, and must))~~ Part II and Part III of this chapter and proposes to use nongeologic sequestration of ~~((greenhouse gases))~~ GHG to meet the ~~((emissions performance standard, will))~~ GHG EPS must submit a sequestration plan ~~((s))~~ or sequestration program ~~((s))~~ for approval ~~((to EFSEC or))~~ ecology ~~((, as appropriate))~~.

(1) A sequestration plan ~~((s))~~ and sequestration program ~~((s))~~ for nongeologic sequestration of GHG must include:

(a) Financial requirements. As a condition of plant operation, each owner or operator of a ~~((baseload electric generation facility or unit or baseload electric cogeneration))~~ facility or unit ~~((utilizing nongeologic sequestration as a method to comply with the emissions performance standard in WAC 173-407-130 is required to))~~ must provide ~~((a))~~ letters of credit sufficient to ensure successful implementation, closure, and post-closure activities identified in the sequestration plan or sequestration program ~~((, including construction and operation of necessary equipment, and any other significant costs))~~.

(i) The owner or operator of a proposed sequestration project ~~((shall))~~ must establish a letter of credit to cover all expenses for construction and operation of necessary equipment, and any other significant costs. The cost estimate for the sequestration project ~~((shall))~~ must be revised annually to

include any changes in the project and ~~((to include))~~ cost changes due to inflation.

(ii) Closure and post-closure financial assurances. The owner or operator ~~((shall))~~ must establish a closure and a post-closure letter of credit to cover all closure and post-closure expenses, respectively. The owner or operator must designate ecology or EFSEC, as appropriate, as the beneficiary to carry out the closure and post-closure activities. The value of the closure and post-closure accounts ~~((shall))~~ must cover all costs of closure and post-closure care identified in the closure and post-closure plan. The owner or operator must revise the closure and post-closure cost estimates ~~((shall be revised))~~ annually to include any changes in the sequestration project and ~~((to include))~~ cost changes due to inflation. The obligation to maintain the account for closure and post-closure care survives the termination of any permits and the cessation of injection. The requirement to maintain the closure and post-closure accounts is enforceable regardless of whether the requirement is a specific condition of the permit.

(b) The application for approval of a sequestration plan or sequestration program ~~((shall))~~ must include ~~((t))~~, but is not limited to ~~((t))~~, the following:

(i) A current site map showing the boundaries of the permanent sequestration project containment system(s) and all areas where ~~((greenhouse gases))~~ GHG will be stored.

(ii) A technical evaluation of the proposed project, including but not limited to, the following:

(A) The name of the area in which the sequestration will take place;

(B) A description of the ~~((facilities))~~ facility or unit and place of ~~((greenhouse gases))~~ GHG containment ~~((system))~~ system(s);

(C) A complete site description ~~((of the site,))~~ including, but not limited to, the terrain, the geology, the climate (including rain and snowfall expected), and any land use restrictions that exist at the time of the application or will be placed ~~((upon))~~ on the site in the future;

(D) The proposed calculated maximum volume of ~~((greenhouse gases))~~ GHG to be sequestered and areal extent of the location where the ~~((greenhouse gases))~~ GHG will be stored using a method acceptable to and filed with ecology; and

(E) Evaluation of the quantity of sequestered ~~((greenhouse gases))~~ GHG and their physical or chemical forms that may escape from the containment ~~((system))~~ system(s) at the proposed project.

(iii) A public safety and emergency response plan for the proposed project. The plan ~~((shall))~~ must detail the safety procedures concerning the sequestration project containment system and residential, commercial, and public land use within one mile, or as necessary to identify potential impacts, of the outside boundary of the project area.

(iv) A ~~((greenhouse gases))~~ GHG loss detection and monitoring plan for all parts of the sequestration project. The approved ~~((greenhouse gases))~~ GHG loss detection and monitoring plan ~~((shall))~~ must address identification of potential release to the atmosphere.

(v) A detailed schedule of annual benchmarks for sequestration of ~~((greenhouse gases))~~ GHG.

(vi) A closure and post-closure plan.

(vii) Any other information that ~~((the department))~~ ecology deems necessary to make its determination.

~~((vii) A closure and post-closure plan.))~~

(c) Monitoring plan. In order to monitor the effectiveness of the implementation of the sequestration plan or sequestration program, the owner or operator ~~((shall))~~ must submit a detailed monitoring plan that will ensure detection of failure of the GHG sequestration method to place the ~~((greenhouse gases))~~ GHG into a sequestered state. The monitoring plan ~~((will))~~ must be sufficient to provide reasonable assurance that the sequestration provided by the project meets the definition of permanent sequestration. The monitoring ~~((shall))~~ must continue for the longer of twenty years beyond the end of GHG placement of the greenhouse gases into a sequestration containment system, or twenty years beyond the date ~~((upon which it is))~~ determined by ecology that all of the ~~((greenhouse gases))~~ GHG have achieved a state ~~((at which))~~ that they are now stably sequestered in that environment.

(d) If the sequestration plan or sequestration program fails to sequester ~~((greenhouse gases))~~ GHG as provided in the plan or program, the owner or operator of the baseload electric generation facility or unit or baseload electric cogeneration facility or unit is no longer in compliance with the ~~((emissions performance standard))~~ GHG EPS.

(2) Public notice and comment. Ecology must provide public notice and a public comment period before approving or denying any sequestration plan or sequestration program.

(a) Public notice. Public notice ~~((shall))~~ must be made only after all information required by ~~((the permitting authority))~~ ecology has been submitted and ~~((after))~~ applicable preliminary determinations, if any, have been made. The ~~((applicant or other initiator of the action))~~ owner or operator of the facility or unit must pay the cost of providing public notice. Public notice ~~((shall))~~ must include analyses of the effects on the local, state and global environment in the case of failure of the sequestration plan or sequestration program. The sequestration plan or sequestration program must be available for public inspection in at least one location near the proposed project.

(b) Public comment period.

(i) The public comment period must be ~~((at least))~~ thirty days ~~((long))~~ or ~~((may be))~~ longer as specified in the public notice.

(ii) The public comment period must extend through the hearing date.

(iii) Ecology ~~((shall))~~ must make no final decision on any sequestration plan or sequestration program until the public comment period has ended and ~~((any))~~ all comments received during the public comment period have been considered.

(c) Public ~~((hearings))~~ hearing(s).

(i) Ecology ~~((will))~~ must hold a public hearing within the ~~((thirty day))~~ public comment period. Ecology will determine the location, date, and time of the public hearing.

(ii) Ecology must provide at least thirty days prior notice of ~~((a))~~ the hearing on a sequestration plan or sequestration program.

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-230 Emissions and electrical production monitoring, recordkeeping and reporting requirements under Part II.** (1) Monitoring and recordkeeping requirements. ~~((For all))~~ A baseload electric generation ~~((facilities))~~ facility or unit~~((s))~~ and baseload electric cogeneration ~~((facilities or units subject to WAC 173-407-120;))~~ facility or unit required to meet GHG EPS in WAC 173-407-130 must monitor and report the following parameters ~~((shall be monitored and reported))~~ as explained below:

(a) Electrical output in MWh: Electrical output as measured at the point of connection with the local electrical distribution network or transmission line, as appropriate. Measurement will be on an hourly or daily basis and recorded in a form suitable for ~~((use in calculating))~~ calculations to determine compliance with ~~((the greenhouse gases emissions performance standard))~~ GHG EPS;

(b) Useful thermal energy output in MWh<sub>eq</sub>: Quantity of energy supplied to nonelectrical production ~~((uses))~~ determined by monitoring both the energy supplied and the unused energy returned by the thermal energy user or uses. The required monitoring can be accomplished through:

(i) Measurement of the mass, pressure, and temperature of the supply and return streams of the steam or thermal fluid; or

(ii) Use of thermodynamic calculations as approved by ecology.

(iii) Measurements will be on an hourly or daily basis and recorded in a form suitable for ~~((use in calculating))~~ calculations to determine compliance with the ~~((greenhouse gases emissions performance standard))~~ GHG EPS.

(c) Regulated ~~((greenhouse gases))~~ GHG emissions.

(i) The regulated ~~((greenhouse gases))~~ GHG emissions are the emissions of regulated ~~((greenhouse gases))~~ GHG from the main plant exhaust stack and any bypass stacks or flares. ~~((For baseload electric generation facilities or units and baseload electric cogeneration facilities or units utilizing))~~ A facility or unit using CO<sub>2</sub> controls and sequestration to comply with the ((greenhouse gases emissions performance standard;)) GHG EPS must include direct and fugitive CO<sub>2</sub> emissions from the CO<sub>2</sub> separation and compression process ~~((are included)).~~

(ii) Carbon dioxide ~~((CO<sub>2</sub>))~~.

(A) ~~((For baseload electric generation facilities or units and baseload electric cogeneration facilities or units))~~ A facility or unit subject to WAC ~~((173-407-120, producing))~~ 173-407-130, with a net output rating of 25 MW or more of electricity, must monitor CO<sub>2</sub> emissions ~~((will be monitored))~~ by a continuous emission monitoring system meeting the requirements of 40 C.F.R. ~~((Sections))~~ 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix F~~((-))~~, except under (c)(i)(A)(I) and (II) of this subsection (federal rules in effect on the date in WAC 173-407-006):

(I) If allowed by the requirements of 40 C.F.R. Part 72, a facility may estimate CO<sub>2</sub> emissions through fuel carbon content monitoring and methods meeting the requirements of 40 C.F.R. ((Sections)) 75.10 and 75.13 and 40 C.F.R. Part 75,

Appendix G (federal rules in effect on the date in WAC 173-407-006).

(II) If the annual heat input to the electric generation facility is less than 90 percent fossil fuel, ecology may approve the use of emission factors in 40 C.F.R. Part 98, Table C-1 (in effect on the date in WAC 173-407-006).

~~(B) ((For baseload electric generation facilities or units and baseload electric cogeneration facilities or units)) A facility or unit subject to WAC ((173-407-120 producing)) 173-407-130, with a net output of less than 25 MW of electricity, ((the owner or operator may either utilize a)) must use one of the following three methods:~~

~~(I) Continuous emission monitoring system meeting the requirements of 40 C.F.R. ((Sections)) 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix F((, or use)) (federal rules in effect on the date in WAC 173-407-006);~~

~~(II) Fuel carbon content monitoring and methods meeting the requirements of 40 C.F.R. ((Sections)) 75.10 and 75.13 and 40 C.F.R. Part 75, Appendix G (federal rules in effect on the date in WAC 173-407-006); or~~

~~(III) Emission factors in 40 C.F.R. Part 98, Table C-1 (in effect on the date in WAC 173-407-006).~~

(C) When the monitoring data from a continuous emission monitoring system does not meet the completeness requirements of 40 C.F.R. Part 75, Subpart D, the ~~((baseload electric generation))~~ facility ~~((operator))~~ owner or operator ~~((will))~~ must substitute data according to the process in 40 C.F.R. Part 75, Appendix C (in effect on the date in WAC 173-407-006).

(D) Continuous emission monitors for CO<sub>2</sub> ~~((will))~~ under (c)(ii) of this subsection must be installed at a location meeting the requirements of 40 C.F.R. Part 75, Appendix A. The CO<sub>2</sub> and flow monitoring equipment must meet the quality control and quality assurance requirements of 40 C.F.R. Part 75, Appendix B (in effect on the date in WAC 173-407-006).

(iii) Nitrous oxide (N<sub>2</sub>O).

~~(A) ((For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to (effective date of this rule in March 2018) and produces 25 MW or more of electricity((;)) must determine the N<sub>2</sub>O emissions ((shall be determined)) as follows:~~

~~(I) For the first year of operation, N<sub>2</sub>O emissions ((are)) will be estimated ((by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency;)) using the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).~~

(II) For succeeding years, N<sub>2</sub>O emissions will be estimated ~~((through use of))~~ using generating unit specific emission factors derived ~~((through use of))~~ from emissions testing using ecology or ~~((Environmental Protection Agency))~~ EPA approved methods. The emission factor ~~((shall))~~ must be derived through testing N<sub>2</sub>O emissions from the stack at varying loads and through at least four separate test periods

spaced evenly throughout the first year of commercial operation.

~~(B) ((For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to (effective date of this rule in March 2018) and produces less than 25 MW of electricity((;)) will estimate the annual N<sub>2</sub>O emissions ((will be estimated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency;)) by the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).~~

~~(C) A facility or unit required to develop a generating unit specific N<sub>2</sub>O emission factor prior to (effective date of this rule in March 2018) must estimate N<sub>2</sub>O emissions using the generating unit specific emission factor.~~

~~(D) Any facility or unit that triggers the applicability in WAC 173-407-120 on or after (effective date of this rule in March 2018) must estimate N<sub>2</sub>O emissions using one of the following emission factors:~~

~~(I) Generating unit specific emission factor derived through emissions testing following the schedule in (c)(iii)(A) of this subsection;~~

~~(II) Emission factor from 40 C.F.R. Part 98, Table C-2; or~~

~~(III) Other emission factor from authoritative sources as approved by ecology.~~

~~(iv) Methane (CH<sub>4</sub>).~~

~~(A) ((For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to (effective date of this rule in March 2018) and produces 25 MW or more of electricity((;)) must determine the CH<sub>4</sub> emissions ((shall be determined)) as follows:~~

~~(I) For the first year of operation, CH<sub>4</sub> emissions ((are)) will be estimated ((by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency;)) using the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).~~

~~(II) For succeeding years, CH<sub>4</sub> emissions will be estimated ((through use of plant)) using generating unit specific emission factors derived ((through use of)) from emissions testing using ecology or ((Environmental Protection Agency)) EPA approved methods. The emission factor ((shall)) must be derived through testing CH<sub>4</sub> emissions from the stack at varying loads and through at least four separate test periods spaced evenly through the first year of commercial operation.~~

~~(B) ((For baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to)) A facility or unit that triggers the applicability in WAC 173-407-120 ((producing)) prior to (effective date of this rule in March 2018) and produces less than 25 MW of electricity((;)) will estimate the annual CH<sub>4</sub> emissions ((will be esti-~~

mated by use of emission factors as published by the Environmental Protection Agency, the federal Department of Energy's Energy Information Agency,) by the emission factors from 40 C.F.R. Part 98, Table C-2 or other authoritative source as approved by ecology ((for use by the facility)).

(C) A facility or unit required to develop a generating unit specific CH<sub>4</sub> emission factor prior to (effective date of this rule in March 2018) must estimate CH<sub>4</sub> emissions using the generating unit specific emission factor.

(D) Any facility or unit that triggers the applicability in WAC 173-407-120 on or after (effective date of this rule in March 2018) must estimate CH<sub>4</sub> emissions using one of the following emission factors:

(I) Generating unit specific emission factor derived through emissions testing following the schedule in (c)(iv)(A) of this subsection;

(II) Emission factor from 40 C.F.R. Part 98, Table C-2;  
or

(III) Other emission factor from authoritative sources as approved by ecology.

(d) Fuel usage and heat content information.

(i) Fossil fuel usage ((will)) must be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement ((will)) must be on an hourly or daily basis and recorded in a form suitable for use in calculating ((greenhouse gases)) GHG emissions.

(ii) Renewable ((energy)) fuel usage ((will)) must be monitored by measuring continuous fuel volume or weight as appropriate for the fuel used. Measurement ((will)) must be on an hourly or daily basis and recorded in a form suitable for use in calculating ((greenhouse gases)) GHG emissions.

(iii) Renewable fuel feedstocks must be monitored by measuring the fuel volume or weight, as appropriate, as the feedstocks are used in the combustion process. Measurement must be on an hourly or daily basis and recorded in a form suitable for use in calculating GHG emissions.

(iv) Renewable resources used in the production of electricity must be monitored continuously by a method approved by ecology to determine heat input to the electric generation process.

(v) Heat content of fossil fuels ((shall)) must be tested at least once per calendar year. The owner or operator of the ((baseload electric generation)) facility or unit ((shall)) must submit a proposed fuel content monitoring program to ecology for ((ecology)) approval. Upon request and submission of appropriate documentation of fuel heat content variability, ecology may allow a source to:

(A) Test the heat content of the fossil fuel less often than once per year; or

(B) ((Utilize representative heat content for the renewable energy source instead of the periodic monitoring of heat content required above:

(iv)) Use the representative heat content for the fuel instead of the periodic monitoring of heat content.

(vi) Renewable ((energy)) fuel heat content ((will)) must be tested monthly or with a different frequency approved by ecology. A different frequency ((will)) must be based on the variability of the heat content of the renewable ((energy)) fuel.

(A) If ((the baseload electric generation facilities or units or baseload electric cogeneration facilities or units subject to WAC 173-407-120)) a facility or unit using a mixture of renewable and fossil fuels ((do)) does not adjust their ((greenhouse gases)) GHG emissions by accounting for the heat input from renewable ((energy)) fuels, monitoring of the heat content of the renewable ((energy)) fuels is not required.

(B) Upon request and with appropriate documentation, ecology may allow a source to ((utilize)) use representative heat content for the renewable ((energy source)) fuel instead of the periodic monitoring of heat content required above.

(vii) Heat content of renewable fuel feedstocks must be tested monthly or on a different schedule approved by ecology. A different schedule will be based on the variability of the heat content of the renewable fuel feedstocks. The heat content of the fuel feedstocks must be measured in the form they are used in the combustion process.

(A) If a facility or a unit using a mixture of renewable and fossil fuels does not adjust their GHG emissions by accounting for the heat input from renewable fuels, monitoring of the heat content of the renewable fuel feedstocks is not required.

(B) Upon request and with supporting documentation, ecology may allow a source to use representative heat content for the renewable fuel feedstock instead of the periodic monitoring of heat content required above.

(2) Reporting requirements. The results of the monitoring required by this section ((shall)) must be reported to ecology and the permitting authority annually.

(a) ((Facilities)) Facility or unit((s)) subject to the reporting requirements of 40 C.F.R. Part 75. Annual emissions of CO<sub>2</sub>, N<sub>2</sub>O and CH<sub>4</sub> ((will)) that occurred in the previous calendar year and supporting information must be reported to ecology and the ((air quality permitting authority with jurisdiction over the facility)) permitting authority by January 31<sup>st</sup> of each calendar year ((for emissions that occurred in the previous calendar year)). The report may be an Excel™ or CSV format copy of the report submitted to EPA per 40 C.F.R. Part 75 with ((the)) N<sub>2</sub>O and CH<sub>4</sub> emissions ((for N<sub>2</sub>O and CH<sub>4</sub>)) appended to the report.

(b) ((For facilities)) Facility or unit((s)) not subject to the reporting requirements of 40 C.F.R. Part 75((s)). Annual emissions of CO<sub>2</sub>, N<sub>2</sub>O and CH<sub>4</sub> that occurred in the previous calendar year and supporting information ((will)) must be reported to ecology and the ((air quality permitting authority with jurisdiction over the facility)) permitting authority by January 31<sup>st</sup> of each calendar year ((for emissions that occurred in the previous calendar year)).

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-240 Enforcement of the emissions performance standard under Part II.** (1) ((Any power plant)) A baseload electric generation facility or unit or baseload electric cogeneration facility or unit subject to WAC ((173-407-120 that does not)) 173-407-130 that fails to meet the ((emissions performance standard on schedule shall)) applicable GHG EPS or any implementation schedules and requirements in a sequestration plan or program may be sub-

ject to enforcement ~~((under))~~ using the enforcement criteria and procedures specified in chapter 70.94 RCW.

Penalties can include:

(a) Financial penalties, which ~~((shall))~~ may be assessed after ~~((any year of))~~ a failure to meet a sequestration benchmark ~~((established))~~ in the sequestration plan or sequestration program. Each pound of ~~((greenhouse-gases))~~ GHG above the ~~((emissions-performance-standard))~~ GHG EPS will constitute a separate violation, as averaged on an annual basis;

(b) Revocation of the approval to construct the source or to operate the source.

(2) If a new, modified or upgraded ~~((baseload electric generation facility or unit or baseload electric cogeneration))~~ facility or unit fails to meet a sequestration plan or sequestration program benchmark on schedule, a revised sequestration plan or sequestration program ~~((will be required to))~~ must be submitted no later than one hundred fifty calendar days after the due date established under subsection (3)(c) of this section for reporting the failure. The revised sequestration plan or sequestration program ~~((is to))~~ must be submitted to ecology ~~((or EFSEC, as appropriate,))~~

(3) Provisions for unavoidable circumstances.

(a) The owner or operator of a facility or unit operated under an approved sequestration plan or sequestration program shall have the burden of proving to ecology ~~((EFSEC, or the decision-making authority))~~ in an enforcement action that failure to meet a sequestration benchmark was unavoidable. This demonstration ~~((shall))~~ must be a condition to ~~((obtaining))~~ obtain relief under (d), (e), and (f) of this subsection.

(b) Failure to meet a sequestration benchmark determined to be unavoidable under the procedures and criteria in this section ~~((shall))~~ must be excused and not subject to financial penalty.

(c) Failure to meet a sequestration benchmark ~~((shall))~~ must be reported as part of the routine sequestration monitoring reports or by January 31st of the year following the calendar year during which the event occurred ~~((or as part of the routine sequestration monitoring reports))~~. Upon request by ecology, the ~~((owner(s) or operator(s))~~ owner or operator of the sequestration project ~~((source(s) shall))~~ must submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(d) Failure to meet a sequestration benchmark due to startup or shutdown conditions ~~((shall))~~ must be considered unavoidable provided the source reports as required under (c) of this subsection ~~((, and))~~. The owner or operator of the sequestration project must adequately demonstrate ~~((s))~~ that the failure to meet a sequestration benchmark could not ~~((have been))~~ be prevented through careful planning and design and if a bypass of equipment occurs, ~~((that such))~~ and the bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(e) ~~((Maintenance.))~~ Failure to meet a sequestration benchmark due to scheduled maintenance ~~((shall))~~ must be considered unavoidable if the source reports as required under (c) of this subsection, and adequately demonstrates that the excess emissions could not ~~((have been))~~ be avoided

through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(f) Failure to meet a sequestration benchmark due to upsets ~~((shall))~~ must be considered unavoidable provided the source reports as required under (c) of this subsection, and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern ~~((indicative of))~~ that indicated inadequate design, operation, or maintenance; and

(iii) The owner or operator took immediate and appropriate corrective action in a manner consistent with good practice for minimizing nonsequestration during the upset event.

(4) Enforcement for permit violations. ~~((a))~~ Enforcement of ~~((an ecology or local air agency permitting authority))~~ a notice of construction ~~((will))~~ must take place under the authority of chapter 70.94 RCW. Enforcement of an ecology approved sequestration plan or sequestration program ~~((will))~~ must be in accordance with this section.

~~((b))~~ Enforcement of any part of an EFSEC site certification agreement will proceed in accordance with RCW 80.50.150.)

### PART III

#### **LONG-TERM FINANCIAL COMMITMENTS; ~~((RELATIONSHIP OF ECOLOGY AND THE WUTC; AND RELATIONSHIP OF ECOLOGY AND THE GOVERNING BOARDS OF))~~ ECOLOGY'S CONSULTATION WITH UTC AND CONSUMER-OWNED UTILITIES ~~((UNDER CHAPTER 80.80 RCW))~~**

AMENDATORY SECTION (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-300 Procedures for determining compliance with the emissions performance standard of a long-term financial commitment ~~((and addressing electricity from unspecified sources and specified sources))~~ under Part II.** ~~((1))~~ The following procedures are adopted by the department to be utilized by the department under RCW 80.80.060 and to be available to and utilized by the governing boards of consumer-owned utilities pursuant to RCW 80.80.070 when evaluating a potential long-term financial commitment when the long-term financial commitment includes electricity from unspecified sources, electricity from one or more specified sources, and/or provisions to meet load growth with electricity from unspecified and/or specified sources:

(2) For each year of a long-term financial commitment for electric power, the regulated greenhouse gases emissions from specified and unspecified sources of power are not to exceed the emissions performance standard in WAC 173-407-130(1), in effect on the date the long-term contract is executed. The emissions performance standard for a long-term financial commitment for electricity that includes electricity from specified and unspecified sources is calculated using a time-weighted average of all sources of generation

and emissions in the years in which they are contributing electricity and emissions in the commitment. Each source's proportional contribution to emissions per each MWh delivered under the contract is added together and summed for each year and divided by the number of years in the term of the commitment.

(3) An extension of an existing long-term financial commitment is treated as a new commitment, not an extension of an existing commitment.

(4) Annual and lifetime calculations of greenhouse gases emissions.

(a) The annual average emissions shall be calculated, for every year of the contract, using the formula in subsection (5) of this section. The calculation of the pounds of greenhouse gases per megawatt-hour is based upon the delivered electricity, including the portion from specified and unspecified sources, of the total portfolio for the year for which the calculation is being made.

(b) The average greenhouse gases emissions per MWh of the power supply portfolio over the life of the long-term financial commitment is compared to the emissions performance standard. The calculation of the pounds of greenhouse gases per MWh is based on the expected annual delivery contracted or expected to be supplied by each specified and unspecified source's portion of the total portfolio of electricity to be provided under the contract for the year for which the calculation is being made.

(c) Default values adopted in this procedure shall be used for each source unless actual emissions are known or specified by the manufacturer. A default greenhouse gases emissions value of an average pulverized coal plant per WAC

173-407-300 (5)(b) shall be used for unspecified sources in the procedure.

(5) The annual average calculation shall be performed using the regulated greenhouse gases emissions factors as follows:

(a) For a specified source, utilize the manufacturer's emissions specification or the measured emission rate for a specified generator. When there is no available information on greenhouse gases emissions from a specified source, utilize the following:

(i) Combined cycle combustion turbines that begin operation after July 1, 2008 = 1,100 lbs/MWh or as updated by rule in 2012 and every five years thereafter.

(ii) Steam turbines using pulverized coal = 2,600 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iii) Integrated gasification combined cycle turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(iv) Simple cycle combustion turbines = 1,800 lbs/MWh minus the amount of greenhouse gases permanently sequestered by the facility on an annual basis divided by the MWhs generated that year.

(v) Combined cycle combustion turbines that begin operation before July 1, 2008 = 1,100 lbs/MWh.

(b) Electricity from unspecified sources = 2,600 lbs/MWh.

(c) Renewable resources = 0 lbs/MWh.

Example Calculation

$$AE = \frac{(F_1 \times MWh_1) + (F_2 \times MWh_2) + (F_3 \times MWh_3) + \dots + (F_n \times MWh_n)}{Total\ MWh}$$

where:

- AE = Average emissions in lb/MWh
- F = Regulated greenhouse gases emissions factor in lb/MWh
- MWh = Total MWh purchased or generated by the utility's own generation capacity during the year
- Total MWh = Total MWh from all source types for that year))

(1) A baseload generation facility or unit or baseload cogeneration facility or unit in a long-term financial commitment must meet the GHG EPS in WAC 173-407-130 in effect at the time the commitment is signed.

(2) A long-term financial commitment must meet the following conditions to comply with the GHG EPS in WAC 173-407-130:

(a) Electricity from unspecified sources is limited to 12 percent of the total electricity in a long-term financial commitment.

(b) Long-term financial commitments with the Bonneville power administration are exempt from meeting the GHG EPS.

(c) For a long-term financial commitment with multiple power plants, each specified power plant named in the long-

term financial commitment must individually meet the GHG EPS in WAC 173-407-130 in effect on the date the commitment is signed. A power plant in a long-term financial commitment with multiple power plants meeting the following criteria is deemed to be in compliance with the GHG EPS:

(i) A facility or unit powered exclusively by renewable resources;

(ii) A facility or unit that is designed and intended to use a renewable fuel to provide at least 90 percent of its total annual heat input;

(iii) A baseload electric cogeneration facility or unit, fueled by natural gas or waste gas or a combination of the two fuels, that was in operation before June 30, 2008, unless it has been subject to a:

- (A) Change in ownership; or
- (B) Upgraded.

(3) If compliance with the GHG EPS for a long-term financial commitment cannot be determined based on the conditions in subsection (2) of this section, procedures in WAC 173-407-140 or 173-407-150 must be used to determine compliance with the GHG EPS. All reports required by WAC 173-407-140(2) or 173-407-150(5) must be sent to ecology. An investor-owned electric utility must send another copy of the reports to UTC. A consumer owned elec-

tric utility must send another copy of the reports to their governing board.

(4) Long-term purchase of coal transition power is exempt from meeting the GHG EPS as long as the term of the long-term purchase meets the schedule in RCW 80.80.040 (3)(c).

(5) In determining if a long-term financial commitment complies with the EPS, all unspecified power will have an emission rate of 2,300 lb/MWh.

**AMENDATORY SECTION** (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-310** ~~((Relationship of ecology and Washington utilities and transportation commission)) Ecology's consultation with UTC under Part II.~~ (1) ~~((The Washington utilities and transportation commission (commission) shall consult with ecology to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040.)) Ecology ((shall)) must report to ((the commission)) UTC whether baseload electric generation will comply with the ((greenhouse gases emissions performance standard)) GHG EPS for ((the duration of)) the period that the baseload electric generation is supplied to the electrical company. ~~((RCW 80.80.060(7).))~~~~

(2) Ecology's consultation with ~~((the commission))~~ UTC includes:

(a) ~~((In assisting the commission to apply the emissions verification procedures adopted, ecology will compare the commission's procedures to the ecology procedures found in WAC 173-407-130, 173-407-140, and 173-407-230.))~~ Assist UTC to apply the conditions in WAC 173-407-300, 480-100-405, and 480-100-415.

(b) ~~((In consulting with the commission to))~~ Determine if a long-term financial commitment for baseload electric generation meets the ~~((greenhouse gases emissions performance standard, ecology shall consider whether the commitment meets WAC 173-407-300))~~ GHG EPS based on the conditions in WAC 173-407-300, 173-407-140, 173-407-150, and 173-407-160.

(3) ~~((When conducting the consultation and reporting processes, ecology will conclude this process of consultation and assistance))~~ Ecology will provide a report within thirty days of receiving all necessary information ~~((from the commission to determine compliance)), unless UTC grants additional time.~~

**AMENDATORY SECTION** (Amending WSR 08-14-011, filed 6/19/08, effective 7/20/08)

**WAC 173-407-320** ~~((Relationship of ecology and the governing boards of)) Ecology's consultation with consumer-owned utilities under Part II.~~ (1) ~~((RCW 80.80.070 (2) requires))~~ The governing boards of consumer-owned utilities ~~((to "review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department,))~~ may consult with ecology to determine whether the baseload electric generation ~~((to be))~~ supplied under ~~((that))~~ a long-term financial commitment complies with the ~~((greenhouse gases emissions~~

performance standard established under RCW 80.80.040." During this consultation process, ecology shall assist the governing boards with the utilization of the method in WAC 173-407-300 to determine whether the long-term financial commitment for baseload electric generation meets the emissions performance standard)) GHG EPS in WAC 173-407-130.

(2) Ecology's assistance will be limited to ~~((that assistance necessary))~~ providing technical support for the board to interpret, clarify or otherwise determine that the proposed long-term financial commitment for baseload electric generation will comply with the ~~((emissions performance standard))~~ GHG EPS.

~~((2) RCW 80.80.070(5) also requires))~~ (3) The governing board~~(s)~~ of consumer-owned utilities ~~((to"))~~ must apply the ~~((procedures adopted by the department))~~ conditions in WAC 173-407-300, 173-407-140, 173-407-150, and 173-407-160 to verify the emissions of ~~((greenhouse gases))~~ GHG from baseload electric generation ~~((under RCW 80.80.040," and allow them to"))~~.

(4) The governing board may request assistance from ~~((the department in doing so." The procedures adopted by the department to be utilized by the governing boards are found in WAC 173-407-300. Ecology shall provide consultation or further assistance to the governing boards of a consumer-owned utility to apply such procedures if the governing board makes such a request.~~

~~((3))~~ ecology in performing the analyses in subsection (3) of this section.

(5) Ecology will ~~((conclude this process of consultation and assistance))~~ provide technical support within thirty days of receiving all necessary information unless the governing board ~~((requesting the assistance))~~ grants additional time.

#### NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
173-407-230	173-407-160

#### WSR 17-20-103

##### PROPOSED RULES

##### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 4, 2017, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-095.

Title of Rule and Other Identifying Information: New WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF); and amending WAC 182-513-1205 Determining eligibility for noninstitutional coverage in an alternate living facility (ALF), 182-513-1215 Community first choice (CFC)—Eligibility, 182-513-1225 Medicaid per-

sonal care (MPC), 182-513-1380 Determining a person's financial participation in the cost of care for long-term care in a medical institution, 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and people age twenty and younger, 182-515-1507 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Financial eligibility if a person is eligible for an SSI-related noninstitutional categorically needy (CN) medicaid program, 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility, 182-515-1512 Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a person is eligible for a [noninstitutional SSI-related categorically needy (CN) program], and 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility.

Hearing Location(s): On November 7, 2017, at 10:00 a.m., at the Cherry Street Plaza, Sue Crystal, Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at [www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than November 8, 2017.

Submit Written Comments to: Health Care Authority (HCA), Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by November 7, 2017, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by November 3, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5118 was signed into law that increases the personal needs allowance (PNA) based on the Social Security cost of living adjustment. This adjustment is subject to legislative funding. The agency adjusted the PNAs accordingly and moved them into a new section, WAC 182-513-1105, to be kept together.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SB 5118, 65th legislature, 2017 regular session.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Stephen Kozak, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1343.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules

unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making applies to client eligibility and does not affect small businesses.

October 4, 2017  
Wendy Barcus  
Rules Coordinator

#### NEW SECTION

**WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF).** (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is \$70 for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is \$70 for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section:

(a) Is \$57.28 for clients who reside in a medical institution; or

(b) Is \$62.79 for clients who reside in an ALF.

(6) Effective January 1, 2018, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration. This adjustment is subject to state legislative funding.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5)(b) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at [www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility (ALF).**

(1) This section describes the eligibility determination for noninstitutional coverage for a ~~((person))~~ client who lives in a department-contracted alternate living facility (ALF) defined under WAC 182-513-1100.

(2) The eligibility criteria for noninstitutional Washington apple health (medicaid) coverage in an ALF follows SSI-related rules under WAC 182-512-0050 through 182-512-0960, with the exception of the higher income standard under subsection (3) of this section.

(3) A ~~((person))~~ client is eligible for noninstitutional coverage under the categorically needy (CN) program if the ~~((person's))~~ client's monthly income after allowable exclusions under chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL) defined under WAC 182-513-1100; and

(b) Is less than or equal to the ~~((person's))~~ client's assessed state rate at a department-contracted facility. To determine the CN standard:  $((y \times 31) + \$38.84)$ , where "y" is the state daily rate. \$38.84 is based on the cash payment standard for a ~~((person))~~ client living in an ALF setting under WAC 388-478-0006.

(4) A ~~((person))~~ client is eligible for noninstitutional coverage under the medically needy (MN) program if the ~~((person's))~~ client's monthly income after allowable exclusions under chapter 182-512 WAC is less than or equal to the ~~((person's))~~ client's private rate at a department-contracted facility. To determine the MN standard:  $((z \times 31) + \$38.84)$ , where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(5) For both CN and MN coverage, a ~~((person's))~~ client's countable resources cannot exceed the standard under WAC 182-512-0010.

(6) The agency or ~~((its))~~ the agency's designee approves CN noninstitutional coverage for twelve months.

(7) The agency or ~~((its))~~ the agency's designee approves MN noninstitutional coverage for a period of months ~~((under chapter 182-504 WAC))~~ described in WAC 182-504-0020 for an SSI-related ~~((person))~~ client, provided the ~~((person))~~ client satisfies any spenddown liability under chapter 182-519 WAC.

(8) ~~((People))~~ Clients who receive medicaid personal care (MPC) or community first choice (CFC) pay all of their income to the ALF except a personal needs allowance ~~((of \$62.79))~~ under WAC 182-513-1105.

(9) A ~~((person))~~ client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the payment under this subsection.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-513-1215 Community first choice (CFC)—Eligibility.** (1) ~~((An applicant))~~ A client who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-

0295 is financially eligible to receive CFC services if the ~~((applicant))~~ client is:

(a) Eligible for a noninstitutional Washington apple health (medicaid) program which provides categorically needy (CN) or alternative benefits plan (ABP) scope of care;

(b) A spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1220; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) ~~((An applicant))~~ A client whose only coverage is through one of the following programs is not eligible for CFC:

(a) Medically needy program under WAC 182-519-0100;

(b) Premium-based children's program under WAC 182-505-0215;

(c) Medicare savings programs under WAC 182-517-0300;

(d) Family planning program under WAC 182-505-0115;

(e) Take charge program under WAC 182-532-0720;

(f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;

(h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

(i) State-funded long-term care (LTC) for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 do not apply to CFC applicants, unless the ~~((applicant))~~ client is applying for long-term services and supports (LTSS) that are available only through one of the HCB waivers under chapter 182-515 WAC.

(4) Home equity limits under WAC 182-513-1350 do apply.

(5) Post-eligibility treatment of income rules do not apply if the ~~((person))~~ client is eligible under subsection (1)(a) or (b) of this section. ~~((People))~~

(6) Clients eligible under subsection (1)(a) or (b) of this section, who reside in an alternate living facility (ALF) ~~((do))~~:

(a) Keep a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pay up to the room and board standard ~~((The room and board amount is based on the effective one-person medically needy income level (MNIL) minus the residential personal needs allowance (PNA)))~~ under WAC 182-513-1105 except when CN eligibility is based on the rules under WAC 182-513-1205.

~~((6) A person who receives CFC and aged, blind, disabled (ABD) cash assistance in an AFH keeps a clothing and personal incidentals (CPI) amount of \$38.84 and pays the remainder of the cash grant and other available income towards room and board.))~~

(7) A ~~((person))~~ client who receives CFC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in

addition to room and board under WAC 182-513-1105, if residing in ~~((a residential setting))~~ an ALF.

(8) Post-eligibility treatment of income rules do apply if a ~~((person))~~ client is eligible under subsection (1)(c) of this section.

(9) A ~~((person))~~ client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

(10) PNA, MNIL, and room and board standards are found at ~~((http://))~~[www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

**AMENDATORY SECTION** (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-513-1225 Medicaid personal care (MPC).**

(1) Medicaid personal care (MPC) is a state-plan benefit available to a ~~((person))~~ client who is determined:

(a) Functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235; and

(b) Financially eligible for a noninstitutional categorically needy (CN) or alternative benefits plan (ABP) Washington apple health (medicaid) program.

(2) MPC services may be provided to a ~~((person))~~ client residing at home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department to provide adult residential care services.

(3) A ~~((person))~~ client who resides in an alternate living facility (ALF) listed in subsection (2) of this section:

(a) Keeps a personal needs allowance (PNA) ~~((of \$62.79))~~ under WAC 182-513-1105; and

(b) Pays room and board up to the ~~((statewide))~~ room and board ((amount)) standard under WAC 182-513-1105, unless CN eligibility is determined using rules under WAC 182-513-1205.

~~((A person who receives MPC and aged, blind, disabled (ABD) cash assistance in an AFH keeps a clothing and personal incidentals (CPI) amount of \$38.84 and pays the rest of the cash grant and other available income towards room and board.~~

~~((5))~~ A ~~((person))~~ client who receives MPC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in ~~((a residential setting))~~ an ALF.

~~((6))~~ (5) A ~~((person))~~ client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to room and board.

~~((7))~~ (6) Current PNA and room and board standards are found at ~~((http://))~~[www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

**AMENDATORY SECTION** (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-513-1380 Determining a ~~((person's))~~ client's financial participation in the cost of care for long-term care in a medical institution.** This rule describes how

the agency or ~~((its))~~ the agency's designee allocates income and excess resources when determining participation in the cost of care in a medical institution.

(1) The agency or ~~((its))~~ the agency's designee defines which income and resources must be used in this process under WAC 182-513-1315.

(2) The agency or ~~((its))~~ the agency's designee allocates nonexcluded income in the following order, and the combined total of (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) ~~((of:~~

~~((i) For the following people who receive a needs-based veteran's pension in excess of \$90 and live in a state veteran's home, \$70:~~

~~((A) A veteran without a spouse or dependent child; or~~

~~((B) A veteran's surviving spouse with no dependent children;~~

~~((ii) For people who live in a state veteran's home and receive a pension of less than \$90, the difference between \$160 and the needs-based veteran's pension amount;~~

~~((iii) For a person living in a state veterans' home who does not receive a needs-based veteran's pension, \$160;~~

~~((iv) For all people in a medical institution receiving aged, blind, disabled, (ABD) or temporary assistance for needy families (TANF) cash assistance, \$41.62; or~~

~~((v) For all other people in a medical institution, \$57.28))~~ under WAC 182-513-1105.

(b) Mandatory federal, state, or local income taxes owed by the ~~((person))~~ client.

(c) Wages for a ~~((person))~~ client who:

(i) Is related to the supplemental security income (SSI) program under WAC 182-512-0050(1); and

(ii) Receives the wages as part of an agency-approved or department-approved training or rehabilitative program designed to prepare the ~~((person))~~ client for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees and administrative costs, including any attorney fees paid by the guardian, as allowed under WAC 182-513-1505 through 182-513-1525.

(3) The agency or ~~((its))~~ the agency's designee allocates nonexcluded income after deducting amounts under subsection (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is:

(i) For the current month;

(ii) For the time period covered by the PNA; and

(iii) Not counted as the dependent member's income when determining the dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income up to the PNA.

(c) A dependent allowance for each dependent of the institutionalized ~~((person))~~ client or the ~~((person's))~~ client's

spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 182-513-1350.

(e) Maintenance of the home of a single institutionalized ~~((person))~~ client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the ~~((person))~~ client or couple is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income deduction.

(4) A ~~((person))~~ client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.

(5) A ~~((person))~~ client is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a ~~((person))~~ client pays only the difference up to the state rate cost of care.

(6) When a ~~((person))~~ client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the ~~((person))~~ client has in a month.

(7) Standards under this section for long-term care are found at ~~((http://))~~ [www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc).

**AMENDATORY SECTION** (Amending WSR 16-04-087, filed 1/29/16, effective 2/29/16)

**WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and people age twenty and younger.** (1) Medically needy (MN) coverage under this section is only available for people age twenty and younger or pregnant women. The medicaid agency determines a ~~((person))~~ client who meets SSI-related criteria under WAC 182-512-0050 eligible for institutional MN coverage under WAC 182-513-1395. If a ~~((person))~~ client meets requirements in both this section and WAC 182-513-1395, the ~~((person))~~ client may choose which program to enroll in for coverage.

(2) A ~~((person))~~ client whose income exceeds the categorically needy (CN) standards under WAC 182-514-0250 and 182-514-0260 is:

(a) Eligible for MN coverage with no spenddown if the ~~((person's))~~ client's countable income (CI) is equal to or less than the department-contracted daily rate times the number of days in the institution;

(b) Eligible for MN coverage after a spenddown under WAC 182-519-0110 is met if the ~~((person's))~~ client's CI is above the department-contracted daily rate times the number of days in the institution but less than the institution's private rate;

(c) Not eligible for payment of long-term care services provided by the institution if the person's CI exceeds the institution's private rate;

(d) Responsible for paying up to the monthly state rate for the facility as participation in the cost of care; and

(e) Allowed to keep a monthly personal needs allowance (PNA) ~~((of at least \$57.28))~~ under WAC 182-513-1105. Current PNA and long-term care standards can be found at ~~((http://))~~ [www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx](http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx).

(3) If a ~~((person's))~~ client's CI exceeds the institution's private rate, the agency determines eligibility for medical coverage under chapter 182-519 WAC.

**AMENDATORY SECTION** (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-515-1507 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Financial eligibility if a ~~((person))~~ client is eligible for an SSI-related noninstitutional categorically needy (CN) medicaid program.** (1) A ~~((person))~~ client is financially eligible for home and community based (HCB) waiver services if the client:

(a) ~~((The person))~~ Is receiving coverage under one of the following ~~((supplemental security income (SSI)-related))~~ categorically needy (CN) medicaid programs:

(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619(b) of the Social Security Act;

(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC; or

(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.

(b) ~~((The person))~~ Does not have a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; and

(c) ~~((The person))~~ Does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A ~~((person))~~ client eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A ~~((person))~~ client eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100 ~~((and does not receive a cash grant from the department of social and health services under WAC 388-400-0060))~~:

(a) Keeps a personal needs allowance (PNA) ~~((of \$62.79))~~ under WAC 182-513-1105; and

(b) Pays towards room and board ~~((up to the room and board standard with the remaining income. The room and board standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105.

(4) A ~~((person))~~ client who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board, if residing in an ALF.

(5) ~~((A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay toward the cost of care and keeps:~~

~~((a) The cash grant amount authorized under WAC 388-478-0033 if living at home;~~

~~(b) A PNA of \$38.84, but must pay towards room and board with the remaining income and ABD cash grant up to the room and board standard if living in an adult family home (AFH). The room and board standard is the federal benefit rate (FBR) minus \$62.79; or~~

~~(c) The cash grant of \$38.84 under WAC 388-478-0006 if living in an assisted living facility.~~

~~(6)) Current resource, income, PNA, and room and board standards are found at (~~http://~~)www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.~~

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility.** (1) A ~~((person))~~ client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a ~~((person's))~~ client's responsibility towards cost of care.

(b) Room and board is a term that refers to a ~~((person's))~~ client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a ~~((person))~~ client must pay toward the cost of care for HCB waiver services authorized by HCS when living at home:

(a) A single ~~((person))~~ client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the federal poverty level (FPL) and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(b) A married ~~((person))~~ client who lives with the ~~((person's))~~ client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the ~~((person's))~~ client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married ~~((person))~~ client who lives at home and apart from the ~~((person's))~~ client's spouse keeps a PNA of up to the FPL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each ~~((person))~~ client receives HCB waiver services is each allowed to keep a PNA of up to the FPL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living at home where each ~~((person))~~ client receives HCB waiver services, one ~~((person))~~ spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The ~~((person))~~ client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The ~~((person))~~ client authorized by HCS retains the federal poverty level (FPL) and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a ~~((person))~~ client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100 ~~((a person))~~. A Client:

(a) Keeps a PNA of ~~((62.79))~~ under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard ~~((The room and board standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first \$65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under WAC 182-513-1505 through 182-513-1525;

(c) Current or back child support garnished or withheld from the ~~((person's))~~ client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the ~~((person's))~~ community spouse's income to the ~~((person's))~~ community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized ~~((person))~~ client, or the ~~((person's))~~ client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A ~~((person))~~ client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A ~~((person))~~ client must pay the ~~((person's))~~ client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A ~~((person))~~ client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a ~~((person))~~ client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the ~~((person))~~ client has received in a month.

(10) Standards described in this section are found at ~~((http://))~~ [www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-515-1512 Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a ~~((person))~~ client is eligible for a noninstitutional SSI-related categorically needy (CN) program.** (1) A ~~((person))~~ client is financially eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) if:

(a) The ~~((person))~~ client is receiving coverage under one of the following ~~((SSI-related))~~ categorically needy (CN) medicaid programs:

(i) Supplemental security income (SSI) program under WAC 182-510-0001. This includes SSI clients under 1619(b) status; or

(ii) Health care for workers with disabilities (HWD) under chapter 182-511 WAC; or

(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC; or

(iv) The foster care program under WAC 182-505-0211 and the ~~((person))~~ client meets disability requirements under WAC 182-512-0050.

(b) The ~~((person))~~ client does not have a penalty period of ineligibility for the transfer of an asset as under WAC 182-513-1363; and

(c) The ~~((person))~~ client does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A ~~((person))~~ client eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A ~~((person))~~ client eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) ~~((of \$62.79))~~ under WAC 182-513-1105; and

(b) Pays towards room and board up to the room and board standard ~~((with remaining income. The room and board~~

~~standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105.

(4) A ~~((person))~~ client who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board if residing in an ALF.

~~(5) ((A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of care and keeps the following:~~

~~(a) The cash grant amount authorized under WAC 388-478-0033 if living at home;~~

~~(b) A PNA of \$38.84, but must pay towards room and board with the remaining income and ABD cash grant for the cost of room and board up to the room and board standard if living in an adult family home (AFH). The room and board standard is the federal benefit rate (FBR) minus \$62.79; or~~

~~(c) The cash grant of \$38.84 authorized under WAC 388-478-0006 when living in an assisted living or DDA group home.~~

~~(6))~~ Current resource, income, PNA and room and board standards are found at ~~((http://))~~ [www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

**WAC 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility.** (1) A ~~((person))~~ client eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a ~~((person's))~~ client's responsibility towards cost of care.

(b) Room and board is a term that refers to a ~~((person's))~~ client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a ~~((person))~~ client must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the ~~((person))~~ client is living at home, as follows:

(a) A single ~~((person))~~ client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single ~~((person))~~ client who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married ~~((person))~~ client who lives with the ~~((person's))~~ client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each ((~~person~~)) client receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The ((~~person~~)) client authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the ((~~person's~~)) client's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The ((~~person~~)) client authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a ((~~person~~)) client must pay toward the cost of care for HCB wavier services authorized by DDA and room and board when the ((~~person~~)) client is living in a department-contracted ALF defined under WAC 182-513-1100. A ((~~person~~)) client:

(a) Keeps a PNA ((~~of \$62.79~~)) under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard ((~~The room and board standard is the federal benefit rate (FBR) minus \$62.79~~)) under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first \$65, plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under WAC 182-513-1505 through 182-513-1525;

(c) Current or back child support garnished or withheld from the ((~~person's~~)) client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term care services, the allocation is limited to an amount that brings the ((~~person's~~)) community spouse's income to the ((~~person's~~)) community spouse's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized ((~~person~~)) client, or the ((~~person's~~)) client's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A ((~~person~~)) client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A ((~~person~~)) client must pay the ((~~person's~~)) client's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A ((~~person~~)) client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a ((~~person~~)) client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the ((~~person~~)) client has received in a month.

(10) Standards described in this section are found at ((~~http://~~))[www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources).

## WSR 17-20-105

### PROPOSED RULES

#### OFFICE OF THE CODE REVISER

[Filed October 4, 2017, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-100.

Title of Rule and Other Identifying Information: Amending chapter 1-06 WAC, relating to access to public records.

Hearing Location(s): On November 22, 2017, at 1:00 p.m., at the Pritchard Building, 1st Floor Dining Room, 415 15th Avenue S.W., Olympia, WA 98504.

Date of Intended Adoption: November 28, 2017.

Submit Written Comments to: Kerry Radcliff, Rules Coordinator, P.O. Box 40551, Olympia, WA 98504-0551, email [Kerry.Radcliff@leg.wa.gov](mailto:Kerry.Radcliff@leg.wa.gov), by November 21, 2017.

Assistance for Persons with Disabilities: Contact Kerry Radcliff, rules coordinator, phone 360-786-6697, TTY 711, email [Kerry.Radcliff@leg.wa.gov](mailto:Kerry.Radcliff@leg.wa.gov), by November 17, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of the code reviser proposes amending chapter 1-06 WAC to better conform such chapter to: (1) Recent changes in the law concerning public records; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC), and (3) current agency practices.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120, and 42.56.520; and chapter 304, Laws of 2017.

Statute Being Implemented: Chapter 304, Laws of 2017.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the code reviser, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Shotwell, Office of the Code Reviser, Pritchard Building, Olympia, Washington, 360-786-6777; Implementation and Enforcement: Office of the Code Reviser, Pritchard Building, Olympia, Washington, 360-786-6777.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The office of the code reviser is not a listed agency in RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 3, 2017  
K. Kyle Thiessen  
Code Reviser

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-010 Purpose.** The purpose of this chapter ~~((shall be))~~ is to ensure compliance by the statute law committee and the office of the code reviser with the provisions of chapter 42.56 RCW ~~((dealing with public records)), the Public Records Act. The agency adopts these rules and regulations so as to provide fullest assistance to inquirers and full public access to the agency's public records while protecting those records from damage or disorganization, preventing excessive interference with other essential agency functions, and not unreasonably disrupting agency operations.~~

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ~~((“Public record” includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by this agency regardless of physical form or characteristics, except (a) those records of the bill drafting functions of the code reviser deemed confidential pursuant to RCW 1.08.027 and (b) computer pro-~~

~~grams, products, and databases deemed exempt pursuant to chapter 42.56 RCW.~~

~~Public record as relates to this agency does not include computer programs, products, and databases prepared, owned, used, or retained by this agency for the benefit of another state agency. Applications for the disclosure of such records should be addressed to the agency in interest.~~

~~(2) “Writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.~~

~~(3)) “Agency” means the committee, the code reviser, the office of the code reviser, and the staff and employees thereof.~~

~~(2) “Business days” are weekdays, Monday through Friday, excluding state legal holidays.~~

~~(3) “Code reviser” means the code reviser employed by the committee pursuant to RCW 1.08.011.~~

~~(4) “Committee” means the statute law committee created pursuant to chapter 1.08 RCW ~~((chapter 157, Laws of 1951)).~~~~

~~(4) “Reviser” means the code reviser employed by the committee pursuant to RCW 1.08.011, and where appropriate the term also refers to the staff and employees of the office of the code reviser.~~

~~(5) “Agency” means the committee, the code reviser, and the staff and employees thereof, unless the context clearly indicates otherwise.~~

~~(6) “Records of the bill drafting functions” means any file or writing in the office of the code reviser created in connection with a request for preparation of legislation or research thereon, and the confidentiality of such records may be waived only by the person who requested the services of the office of the code reviser).~~

~~(5) “Public record” and “writing” have the meanings given in RCW 42.56.010.~~

~~(6) “Public Records Act” means chapter 42.56 RCW.~~

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-030 Description of central and field organization.** (1) ~~((The office of the code reviser is located in the Pritchard Building, Olympia, Washington, 98504.~~

~~(2)) The committee consists of eleven members. ~~((The secretary of the senate, the chief clerk of the house of representatives, the staff director of a nonpartisan professional committee, staff of the senate and the house of representatives, two members of the senate and the house of representatives, and one each appointed by the governor, the chief justice of the supreme court, and the Washington State Bar Association.))~~ The committee employs a code reviser, who serves as its secretary, employs necessary staff for the office of the code reviser, and manages the daily operations of the office of the code reviser.~~

~~((3))~~ (2) Among the primary responsibilities of the ~~((committee and the code reviser))~~ agency is the duty to peri-

odically codify, index, and publish the *Revised Code of Washington* and to revise, correct, and harmonize the statutes by means of administrative or suggested legislative action as may be appropriate. The agency is also the official bill drafting arm of the legislature and its various committees, and prepares for the legislature all bills, memorials, resolutions, amendments, and conference reports, which activities are pursued on a nonpartisan, professional, lawyer-client, confidential basis under RCW 1.08.027(, and RCW 1.08.028 prohibits the office of the code reviser from rendering written opinions concerning the constitutionality of any proposal)). The agency also produces the legislative digest and history of bills ((and the daily status report)). Immediately following each session of the legislature, the committee indexes and publishes the ((temporary edition of the)) session laws ((and subsequently publishes the permanent edition; it also responds to citizen's requests for copies of recently enacted laws)). The committee administers chapter 34.05 RCW, the Administrative Procedure Act, serving as official repository for the rules of the various state agencies and the institutions of higher education, and creating and publishing the *Washington Administrative Code* and the *Washington State Register*.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-050 Public records available.** All public records of the agency((, as defined in WAC 1-06-020, are deemed to be)) are available for public inspection and copying pursuant to ((these rules)) this chapter, except as otherwise provided by ((chapter 42.56 RCW and WAC 1-06-100)) law.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-060 Public records officer.** The agency's public records ((shall be)) are in the charge of the public records officer designated by the code reviser. The public records officer ((shall be)) is responsible for the following: The implementation of the agency's rules and regulations regarding release of public records, coordinating the staff of the agency in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of ((chapter 42.56 RCW)) the Public Records Act. The public records officer may be contacted as described in WAC 1-06-140.

AMENDATORY SECTION (Amending WSR 09-14-023, filed 6/23/09, effective 8/1/09)

**WAC 1-06-070 Office hours.** Public records ((shall be)) are available for inspection and copying by appointment only, as described in WAC 1-06-086. Appointments may only be scheduled during the customary office hours of the agency. For the purposes of this chapter, the customary office hours ((shall be)) of the agency are from 8:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-080 Requests for public records.** ((In accordance with requirements of chapter 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the agency which shall be available at its office. The form shall be presented to the public records officer, or to any member of the agency's staff, if the public records officer is not available, at the office of the agency during customary office hours. The request shall include the following information:

(a) The name, address, and organization represented, if any, of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the agency's current index, an appropriate description of the record requested;

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.) All requests under the Public Records Act to inspect or copy public records of the agency must be written and directed to the agency public records officer at the email address, street address, or facsimile number set forth in WAC 1-06-140. Requests may also be physically delivered to the front desk of the office of the code reviser during normal business hours. Each request must include:

(1) The requestor's name, email address or street address, and telephone number;

(2) A request for identifiable public records; and

(3) An indication that the request is made pursuant to the Public Records Act.

NEW SECTION

**WAC 1-06-082 Responses to public records requests.**

(1) **Generally.** The agency will respond to public records requests in the manner prescribed by the Public Records Act.

(2) **Priority of requests.** The agency will generally handle requests in the order in which they are received. However, the agency will modify this approach, to the extent it deems necessary, to ensure that requests which seek larger volumes of records, require closer review, or are otherwise more complicated or time consuming, do not unreasonably delay simpler, more routine requests.

(3) **Installments.** The agency may provide records on an installment basis as provided in the Public Records Act. For

purposes of WAC 1-06-084 through 1-06-090 each installment of records is treated as a separate public records request, unless otherwise specified.

(4) **Customized electronic access.** Where the agency deems it appropriate, the agency may choose to provide customized electronic access to public records. However, any requestor seeking such customized electronic access must pay, in advance, for agency staff time and any other direct costs related to providing such customized electronic access. Because the agency maintains electronic records in a very wide variety of formats, the viability of providing this service is evaluated on a case-by-case basis.

#### NEW SECTION

**WAC 1-06-084 Notice of availability.** (1) **Generally.** Once records responsive to a request, or any installment thereof, have been located, assembled, reviewed, and prepared for release, and any affected third persons or agencies notified, the agency will promptly notify the requestor that those records are available for inspection or copying.

(2) **Statement of copying, mailing, or other costs.** The notice of availability will state any costs for obtaining a copy of the records, the costs for having a copy mailed to the requestor, and any other allowable costs under WAC 1-06-090 or the Public Records Act.

(3) **Response to notice of availability.** Upon receipt of a notice of availability, the requestor may inspect the records by:

(a) Scheduling a viewing appointment as provided under WAC 1-06-086;

(b) Requesting that a copy of the requested records be held for pickup at the agency office, subject to payment of any copying or other charges; or

(c) Requesting that a copy of the requested records be sent to the requestor, subject to payment of any copying or other charges.

(4) **Failure to respond to notice of availability.** If, within ten business days of issuance of a notice of availability, the requestor fails to claim the records, or any installment thereof, by either scheduling a viewing appointment or requesting copies and making any required payment, the agency may consider the request closed. In such case, the agency may cease locating, assembling, reviewing, or otherwise processing any remaining records, and it may dispose of any records made available as provided under WAC 1-06-095.

#### NEW SECTION

**WAC 1-06-086 Viewing appointments.** (1) **No fee.** No fee is charged for inspecting records at the agency's office.

(2) **By appointment only.** In-office inspections are by appointment only. In-office inspections must be scheduled in advance by contacting the agency as provided in WAC 1-06-140.

(3) **Protection of public records.** Access to records during viewing appointments is restricted to the viewing area designated by the agency. No document may be physically removed by a member of the public from the viewing area for any reason whatsoever; nor may any member of the public

who is viewing documents disassemble, deface, or cause the disorganization of any record for any reason whatsoever. An agency staff member may observe any inspection to ensure that records are not disorganized, defaced, or otherwise harmed. Records furnished must be returned in the same file sequence or organization as when furnished. Boisterous or otherwise disruptive conduct during viewing appointments is not permitted.

(4) **Identification of records reviewed.** At the end of each viewing appointment, the requestor shall identify to agency staff those records reviewed during the appointment. If any records remain to be reviewed, another viewing appointment must be scheduled at that time. Reviewed records, or remaining records for which no further viewing appointment has been scheduled, are subject to disposition as provided under WAC 1-06-095.

(5) **Obtaining copies at viewing appointments.** At the end of each viewing appointment, the requestor shall identify to agency staff any records he or she would like copied. Agency staff will arrange to provide such copies in as timely a manner as possible in view of all circumstances, including the volume of copies requested, any pending copying requests, time of day, staff resources, and any other relevant considerations. Records identified for copying during viewing appointments are subject to prepayment of any copying or other costs in accordance with WAC 1-06-090.

(6) **Failure to attend a scheduled viewing appointment.** A requestor who fails to attend a scheduled viewing appointment must call the agency within ten business days to reschedule the missed appointment. Unless otherwise permitted by the agency, a viewing appointment may not be rescheduled more than two times. If a requestor fails to reschedule a missed viewing appointment within ten business days or has already rescheduled the appointment two times, the agency may consider the request closed and may dispose of any records or copies made available in accordance with WAC 1-06-095.

AMENDATORY SECTION (Amending WSR 06-17-010, filed 8/4/06, effective 9/4/06)

**WAC 1-06-090 Copying of public records.** ~~((No fee shall be charged for the inspection of public records. Upon request for an identifiable public record, the office of the code reviser may charge a fee of:~~

~~•Thirty five cents per page of copy for providing paper copies of public records maintained on paper or electronically;~~

~~•Two dollars per CD-ROM for copies of electronically maintained public records;~~

~~•Two dollars per page and fifteen dollars per hour charge for double column, publication master copies of electronically maintained public records.~~

~~The office of the code reviser may fax documents, but there is a ten page maximum. There is no charge for this service.~~

~~These charges are the amounts necessary to reimburse the agency for its actual costs incident to such copying.)~~ (1) **Copying facilities available.** Subject to payment of copying and other charges, facilities will be made available to request-

ors for the copying of public records as set forth under WAC 1-06-086, except when and to the extent that this would unreasonably disrupt the operations of the agency.

(2) **Copying costs.** In accordance with RCW 42.56.070 (7) and 42.56.120, the agency may charge fees for providing copies of public records. The agency has determined that calculating the actual costs for providing copies would be unduly burdensome. This determination is based on the large number of factors involved in calculating the actual cost and the frequency with which these factors change. The agency does not currently have accurate data regarding these factors, nor does it have the resources or appropriated funds to conduct an actual cost study. The agency cannot divert resources away from other critical agency programs in order to perform such a cost study. Additionally, such a study would likely need to be repeated on a regular basis. Therefore, the agency adopts the schedule of fees provided in RCW 42.56.120(2).

(3) **Other costs.** The agency may charge for nonpaper media (for example, without limitation, compact disks (CDs), digital versatile disks (DVDs), audiotape, or videotape) used to provide copies, packaging, postage, or other charges as allowed by law. Such charges will not exceed the amount necessary to reimburse the agency for actual costs.

(4) **Deposits.** The agency may require a ten percent deposit on copying or other charges. Any required deposit must be paid before the request is processed.

(5) **Prepayment.** The agency will not release any requested copies of public records unless and until the requestor has paid all copying and other charges. If payment is not received by the agency within fifteen business days of issuance of the agency's notice of availability, the agency may consider the request closed, and any records or copies responsive to such request are subject to disposition as provided under WAC 1-06-095.

(6) **Waiver.** The agency, in its sole discretion, may waive any fee assessed for providing copies of public records whenever the agency determines that collection of the fee would be contrary to the agency's mission or would not be in the public interest.

(7) **Customized publications.** The agency maintains a separate fee schedule for use with requests that seek creation of a customized publication or compilation. Because these requests seek creation of a new record, they are outside the scope of this chapter and chapter 42.56 RCW.

#### NEW SECTION

**WAC 1-06-095 Closing public records requests.** (1) **Generally.** Once the requestor has inspected or been provided with copies of the records made available in response to his or her request, that request is closed. However, with respect to any installment of records other than the final installment, the foregoing applies only to that installment and not the entire request, unless otherwise provided in this chapter.

(2) **Other closing events.** A request may also be closed:

(a) If a requestor does not respond to a request for clarification or otherwise fails to clarify within ten business days;

(b) If the requestor fails to make a required deposit or payment for requested copies as provided under WAC 1-06-090;

(c) If the requestor fails to respond to a notice of availability as provided under WAC 1-06-084;

(d) If all records identified in any notice of availability, including a notice with respect to an installment of records, have not been inspected, paid for, or picked up within fifteen business days of issuance of such notice of availability; or

(e) As otherwise provided by this chapter or by law.

(3) **Disposition of records upon closing.** Upon the closing of a request, originals of any records assembled in response to the request will be refiled, and any copies of records may be destroyed.

**AMENDATORY SECTION** (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-100 Exemptions.** (1) ~~(The agency reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 1-06-080 is exempt under the provisions of RCW 1.08.027 or chapter 42.56 RCW.~~

(2) ~~In addition, pursuant to RCW 42.56.070(1), the agency reserves the right to delete identifying details when it makes available or publishes any public record, in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.56 RCW. The public records officer will fully justify such deletion in writing.~~

(3)) **Generally.** Chapter 42.56 RCW, and other applicable law, provide that certain public records are exempt from public inspection and copying. For informational purposes only, the agency lists the following laws that are believed to exempt or prohibit disclosure of specific information or records of the agency:

(a) RCW 1.08.027 exempts or prohibits disclosure of certain records related to the bill drafting functions of the agency. This includes any file or writing in the office of the code reviser created in connection with a request for preparation of legislation or research thereon.

(b) RCW 5.60.060 (2)(a) exempts or prohibits disclosure of certain records relating to communication between an attorney and his or her client.

(c) RCW 44.68.060(2) may exempt or prohibit disclosure of certain records placed or maintained in the legislative service center by the agency. RCW 44.68.060(3) exempts or prohibits disclosure of certain bill drafting records placed or maintained in the legislative service center by the agency.

(2) **Identification of exemptions.** All denials of requests for public records (~~must~~) will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

**AMENDATORY SECTION** (Amending Order 8, filed 9/25/74, effective 10/25/74)

**WAC 1-06-110 Review of denials of public records request.** (1) **Petition for review.** Any person who objects to

the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the public records officer. The written request ~~((shall))~~ must specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) **Response to petition.** Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request ~~((shall))~~ will refer ~~((it))~~ the request for review to the code reviser~~((, who shall))~~ or his or her designee. The code reviser or designee will immediately consider the matter and either affirm or reverse such denial~~((The request shall be returned with a final decision,))~~ within two business days following ~~((the original))~~ receipt of the written request for review of the denial.

(3) **Exhaustion of administrative remedies.** Administrative remedies ~~((shall))~~ are not ~~((be considered))~~ exhausted until the agency has returned the petition with a decision or until the close of the second full business day following receipt of the written request for review of the denial ~~((of inspection))~~, whichever occurs first.

**AMENDATORY SECTION** (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-130 Records index.** (1) A chronological index is maintained providing identifying information as to all governmental records ~~((issued, adopted, or promulgated after June 30, 1972,))~~ that are deemed by the agency to fall within the purview of RCW 42.56.070 ~~((and that are not exempted under chapter 42.56 RCW, RCW 1.08.027, 40.14.180, or WAC 1-06-020))~~ (5).

(2) The current index promulgated by the agency ~~((must be))~~ is available to all persons under the same rules ~~((and on the same rules))~~ and on the same conditions as are applied to public records available for inspection and copying.

**AMENDATORY SECTION** (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

**WAC 1-06-140 ~~((Communications with the agency))~~**  
**Public records address.** ~~((All communications with the agency including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.56 RCW and these rules; requests for copies of the agency's rules and other matters, shall be addressed as follows:))~~ The agency's public records officer may be contacted at the following mailing address, telephone number, or email address:

Public Records Officer  
Office of the Code Reviser~~((;~~  
e/o Public Records Officer,)  
P.O. Box 40551~~((;))~~  
Olympia, WA 98504-0551  
Telephone: 360-786-6777  
Facsimile: 360-786-1471  
Email: CodeRev.WA@leg.wa.gov  
The agency's web site is at [http://leg.wa.gov/Code](http://leg.wa.gov/CodeReviser/)

Reviser/.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 1-06-040 Operations and procedures.  
WAC 1-06-120 Protection of public records.  
WAC 1-06-160 Request for public record—Form.

## **WSR 17-20-106** **PROPOSED RULES** **OFFICE OF** **FINANCIAL MANAGEMENT**

[Filed October 4, 2017, 9:29 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-52-225 For purposes of this chapter, how must documents be filed with the board?

Hearing Location(s): On November 9, 2017, at 8:30 a.m., at the Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: November 9, 2017.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, Olympia, WA 98501, email [Kristie.wilson@ofm.wa.gov](mailto:Kristie.wilson@ofm.wa.gov), fax 360-586-4694, by November 2, 2017.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 2, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OFM is proposing to amend WAC 357-52-225 to add email as an option to file with the personnel resources board (PRB).

Reasons Supporting Proposal: Currently the PRB may only receive documents when filed by mail or fax.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue, 360-407-4139.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

October 4, 2017  
 Roselyn Marcus  
 Assistant Director of  
 Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-191, filed 12/21/04, effective 7/1/05)

**WAC 357-52-225 For purposes of this chapter, how must ~~((written))~~ documents be filed with the board? (1) Filing ~~((generally, Papers that must be filed with the board))~~ by mail: Appeal requests are considered ~~((to be))~~ filed ~~((only))~~ when ~~((the papers are actually))~~ received in the board's office in Olympia, Washington.**

(2) Filing by ~~((telephone facsimile))~~ fax:

(a) ~~((Written documents filed with the board by telephone facsimile))~~ Documents by fax are considered ~~((received))~~ filed when a legible copy of the documents ~~((is reproduced on the board's telephone facsimile equipment in the board's office))~~ are received. If transmission begins after ~~((customary))~~ office hours, ~~((which are))~~ 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the documents will be deemed filed on the next business day.

(b) ~~((Any document filed with the board by telephone facsimile should be preceded by))~~ Documents by fax must have a cover page identifying the addressee; the ~~((party))~~ person making the transmission, including the address, telephone and ~~((telephone facsimile))~~ fax number ~~((of such party))~~; the appeal to which the documents ~~((relates; the date of transmission; and the total number of pages included in the transmission))~~ are related to.

(c) The ~~((party))~~ person attempting to file ~~((papers by telephone facsimile))~~ by fax bears the risk that the ~~((papers))~~ documents will not be timely received or legibly printed, regardless of the cause. If the ~~((telephone facsimile))~~ fax is not legible, it will not be considered ~~((as if it had never been))~~ sent.

(d) The original of any documents filed by ~~((telephone facsimile))~~ fax should be mailed to the board within twenty-four hours of the time that the ~~((telephone facsimile))~~ fax was sent.

~~((The filing of papers by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows.))~~ (3) Filing by electronic mail (email): If the documents are sent after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the documents will be deemed filed on the next business day.

The original of any documents filed by email should be mailed to the board within twenty-four hours of the time that the email was sent.

## WSR 17-20-107

### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 17-02—Filed October 4, 2017, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-104.

Title of Rule and Other Identifying Information: The Washington state department of ecology is proposing new chapter 173-228 WAC, Vessel sewage no discharge zones, to establish a Puget Sound no discharge zone (NDZ).

The Puget Sound NDZ would cover two thousand three hundred square miles of marine waters of Washington state inland from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.

Hearing Location(s): On November 13, 2017, at 2:00 p.m., webinar only hearing, to join the webinar hearings, use the following: **Web link** <https://watech.webex.com/watech/onstage/g.php?MTID=ec7e53ab91e33e8d47a6493617234fc20> or **phone** 240-454-0887 (Access code: 805 088 513); on November 13, 2017, at 6:00 p.m., webinar only hearing, to join the webinar hearings, use the following: **Web link** <https://watech.webex.com/watech/onstage/g.php?MTID=ed5c33f0e9867db925e1f1b0b35563375> or **phone** 240-454-0887 (Access code: 803 382 624); and on November 15, 2017, at 11:00 a.m., in-person only hearing, South Seattle College, Georgetown Campus, 6737 Corson Avenue South, Seattle, WA 98108. All three scheduled hearings will have the same agenda:

- Brief presentation.
- Question and answer session.
- Formal public hearing.

We are holding the two November 13 hearings via webinar. Webinars are an online meeting forum that you can attend from any phone and computer using internet access.

Date of Intended Adoption: February 28, 2018.

Submit Written Comments to: Amy Jankowiak, Department of Ecology, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, email please submit comments online or by mail, electronic comments <http://ws.ecology.commentinput.com/?id=EQHJt>, by November 30, 2017.

Assistance for Persons with Disabilities: Contact Hanna Waterstrat, phone 360-407-7668, TTY 877-833-6341, email [hanna.waterstrat@ecy.wa.gov](mailto:hanna.waterstrat@ecy.wa.gov), 711, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of ecology is proposing new chapter 173-228 WAC, Vessel sewage no discharge zones. This rule will establish a Puget Sound NDZ, which would prohibit the release of sewage (black water) from vessels, whether treated or not.

Reasons Supporting Proposal: Puget Sound is a unique, sensitive water body. Its limited tidal flushing makes it prone to poor water quality conditions. Federal law currently allows vessels to discharge treated sewage within three miles of shore.

We are beginning a rule making to make Puget Sound an NDZ, which would prohibit the release of sewage (black water) from vessels, whether treated or not. This follows the five year stakeholder process, the petition submittal to the Environmental Protection Agency (EPA), and EPA's final affirmative determination that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage

from vessels are reasonably available for the waters of Puget Sound. This information will all be used as part of this rule making.

The Puget Sound NDZ would cover two thousand three hundred square miles of marine waters of Washington state inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.

Vessel sewage discharges have a high potential impact due to proximity, often directly over or near shellfish and other protected resources, such as swimming beaches. Shellfish beds are vulnerable to pathogen pollution (which comes from sewage), which threatens an important shellfish food supply in Washington state. Due to this risk, we have closed approximately three thousand acres of shellfish harvesting areas that are in close proximity to marinas, we anticipate that under these rules the status of these shellfish harvesting restrictions would be reevaluated.

Our state has made large investments in sewage treatment, stormwater management, and in the prevention of industrial pollution and agricultural runoff. Making Puget Sound an NDZ for vessel sewage addresses a missing piece in our strategy to cleanup and restore Puget Sound. It is a near-term action in the Puget Sound action agenda, and is a recommendation of the Washington shellfish initiative.

On February 21, 2017, EPA made a final affirmative determination that the Puget Sound region, as described above, has adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels reasonably available. EPA said the state may finalize its proposed designation.

Most of Puget Sound's estimated one hundred fifty-six thousand six hundred recreational and commercial vessels with onboard toilets have sewage holding tanks and use pump-out stations, or wait to discharge more than three miles from shore or at sea. Roughly two thousand two hundred, or two percent, have limited treatment systems and would need to add holding tanks.

The rule will clarify requirements necessary to implement the NDZ determination by EPA, which applies to all recreational and commercial vessels. Previous work in preparation for the petition to EPA lead to including a delayed implementation of five years for some commercial vessels such as tugs, fishing, research, and small overnight passenger cruise vessels to add sewage holding tanks.

Statutory Authority for Adoption: RCW 90.48.030, 90.48.035, 90.48.260, and 33 U.S.C. § 1322.

Statute Being Implemented: Chapter 90.48 RCW and 33 U.S.C. § 1322.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Jankowiak, 3190 160th Avenue S.E., Bellevue, WA 98008, 425-649-7195; Implementation: Heather R. Bartlett, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-6600; and Enforcement: Coordinated by water quality program

staff and other agencies with jurisdiction, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-6600.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-407-6184, TTY 877-833-6341, email kasia.patora@ecy.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement (SBEIS) is required.

#### Small Business Economic Impact Statement Relevant Information for State Register Publication

#### Proposed chapter 173-228 WAC, Vessel Sewage No Discharge Zones

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit or government agencies. The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES:** The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule. For this proposed rule making, the baseline includes:

- Chapter 90.48 RCW, Water pollution control.
- 33 U.S.C. § 1251 et seq. (1972) - U.S. Clean Water Act.
- EPA 2013 Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels.
- There is no existing NDZ rule in Washington state.

#### **COSTS OF COMPLIANCE: EQUIPMENT**

The proposed rule elements that differ from the baseline and are not *specifically* dictated in the authorizing statute or elsewhere in law or rule include all elements of the proposed rule:

- Establishes an NDZ in all the marine waters of Washington state inward from the line between New Dungeness

Lighthouse and the Discovery Island Lighthouse to the Canadian border, and in the fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound. (See Appendix B for map.)

- Requires all vessels with installed and operable toilets to have a Type III marine sanitation device (MSD) to allow for complete and adequate sewage holding capacity while in the NDZ.
- Requires all vessels with MSD to secure the devices to prevent the discharge of sewage in the NDZ.
- Requires vessels without installed toilets to dispose of any collected sewage from portable toilets or other containment devices at disposal facilities (including pumpouts) in a manner that complies with state law.
- Delays requirements for tug boats, commercial fishing vessels, small commercial passenger vessels, and National Oceanic and Atmospheric Administration (NOAA) research and survey vessels.
- Exempts public vessels actively involved in emergency, safety, security, and related contingency operations where it would not be possible to comply with the NDZ from requirements.

**COSTS OF COMPLIANCE: SUPPLIES, LABOR, PROFESSIONAL SERVICES**

The proposed rule is likely to result in compliance costs for retrofits (equipment, labor, professional services) and using pumpouts (professional services).

Vessel Type	20-Year Present Value Retrofit Costs	20-Year Present Value Pumpout Costs
<b>Harbor vessels:</b>		
Tugboats (various types)	\$91,233,047	\$148,190,365
Commercial fishing vessels (low)	\$19,649,836	\$40,635,387
Commercial fishing vessels (high)	\$59,544,958	\$61,568,768
Small commercial passenger ships	\$1,912,107	\$0
NOAA research and survey vessels	\$633,447	\$1,419,453
Ferries	\$0	\$0
Military and other government	\$0	\$0
Excursion vessels	\$0	\$0
<b>Oceangoing vessels:</b>		
Container ships, cargo, and carriers	\$0	\$0
Large and medium cruise ships	\$0	\$0
<b>Recreational vessels:</b>		
Less than 26 feet	\$0	\$0
Greater than 26 feet	\$397,589,940	\$0

Total twenty year present value costs for retrofits are estimated to be between \$511 million and \$551 million, including all costs estimated. Isolating only costs to businesses and government, this number is \$113 million to \$153 million.

Total twenty year present value costs associated with pumpouts are estimated to be between \$190 million and \$211 million, including all costs estimated.

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS**

Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:** The average affected small business likely to be covered by the proposed rule employs approximately 7.5 people<sup>1</sup>. The largest ten percent of affected businesses employ an average of 140.5 people.<sup>2</sup> Based on present-value cost estimates from Chapter 3, we estimated the following compliance costs per employee.

<sup>1</sup> WA Employment Security Department (2017) Establishment size by number of Employees 2016. <https://www.esd.wa.gov/labormarket-info/establishment-size>.

<sup>2</sup> Ibid.

RETROFITS	20-Year Present-Value Cost per Employee IF SMALL	20-Year Present-Value Cost per Employee IF LARGEST
Commercial passenger	\$137,094	unknown
Commercial fishing—LOW	\$9,934	unknown
Commercial fishing—HIGH	\$30,102	unknown
Tugboats	\$8	\$0.04
PUMPOUTS	20-Year Present-Value Cost per Employee IF SMALL	20-Year Present-Value Cost per Employee IF LARGEST
Commercial passenger	\$0	\$0
Commercial fishing—LOW	\$20,542	unknown
Commercial fishing—HIGH	\$31,125	unknown
Tugboats	\$12.97	\$0.51

Unknown cost ratios are due to limited data availability for the largest businesses, which could be potentially individually identified in aggregate data.<sup>3</sup> Note that commercial fishing values are based on entire commercial fishing vessel population of three hundred forty-seven initial 2005 population, and commercial passenger estimates are based on an initial population of three if they choose to retrofit.

<sup>3</sup> Ibid.

We concluded that the proposed rule is likely to have disproportionate impacts on small businesses within the industries that incur compliance costs, based on identifiable data, and therefore ecology must include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible. Where the relative ratios are unknown, ecology must also mitigate costs to small businesses. Note that employment distributions were available at the three-digit NAICS level, which combined different sizes of vessel[s] (such as small commercial passenger vessels that are primarily large businesses, and large cruise ships owned exclusively by large businesses) and were identified at the facility or location level. This means the disproportionate impact identified in the table above is likely overestimated.

**CONSIDERATION OF LOST SALES OR REVENUE:** Businesses that would incur costs could experience reduced sales or revenues if the costs would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes. Businesses could also lose sales and revenue under the proposed rule if they need to take time away from business operations to comply. Based on the assumption that tugs would need to take additional time off of doing business, and a reported cost of between approximately \$2,500 and \$3,000 in lost revenues per pumpout event for tugs that were not retrofitted with a Type III MSD.<sup>4</sup>

<sup>4</sup> WA Ecology (2012). Phase 2 Vessel Population and Pumpout Facility Estimates, Puget Sound No Discharge Zone for Vessel Sewage. Publication no. 12-10-031 Part 4.

**MITIGATION OF DISPROPORTIONATE IMPACT:** The RFA (RCW 19.85.030(2)) states that:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation,

each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

Ecology considered all of the above options, and included the following legal and feasible elements in the proposed rule that reduce costs. In addition, ecology considered the alternative rule contents discussed in Chapter 6, and excluded those elements that would have imposed excess compliance burden on businesses. For vessel types that expressed concern about being able to comply, which included small businesses, the proposed rule allows an additional five years before compliance is required. Other NDZs, such as in Massachusetts, required immediate compliance.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:** Ecology involved small businesses and local government in its development of the proposed rule as part of its overall engagement strategy, summarized in the table below.

Outreach Activity	Date	Description	Attendees/Audience
Washington Departments of: Health (DOH), Parks (Parks) and Fish and Wildlife (DFW) consultations	2011-2012	Ecology included other state agencies in the early planning process of NDZ evaluation.	DOH, Parks, DFW, WA Sea Grant, PSP
Annual Cruise Ship Memorandum of Understanding (MOU) meetings	January 13, 2011 February 16, 2012 February 28, 2013	At each of these annual MOU meetings, ecology briefed the cruise industry, the Port of Seattle, and the public on the NDZ evaluation project progress to-date.	Cruise Lines/Assoc, Port of Seattle
People for Puget Sound meetings	2011-2012	Ecology involved People for Puget Sound on the first phase of the NDZ, to provide input and help with research.	People for Puget Sound
Clean Boating Foundation meeting	January 9, 2012	Ecology provided a presentation, open discussion, and answered questions on the NDZ evaluation project.	Clean Boating Foundation
Washington's Clean Marina meeting	June 13, 2012	Ecology provided a presentation, open discussion, and answered questions on the NDZ evaluation project.	Clean Marina WA
Ballast Water Workgroup meeting	June 14, 2012	This meeting was focused on the vessel general permit, but ecology briefly mentioned/discussed the NDZ with commercial vessel stakeholders.	Washington Ports Association, Port of Seattle, various commercial vessel reps
Washington Sea Grant	Summer 2012	Ecology worked with Washington Sea Grant on a survey for recreational boats during the summer of 2012.	Washington Sea Grant, recreational boaters
Recreational Boaters Association of Washington (RBAW) meeting	September 6, 2012	This meeting was a result of email exchanges between RBAW folks and ecology and included a discussion session on the NDZ evaluation project, clarifications, and technical discussions.	Recreational boaters/RBAW

Outreach Activity	Date	Description	Attendees/Audience
Washington Boating Alliance (WBA) meeting, Tacoma	December 13, 2012	Ecology provided a presentation, open discussion, and answered questions on the NDZ evaluation project.	Recreational boaters/WBA: RBAW, Northwest Marine Trade Association (NMTA), Northwest Yacht Brokers Association (NYBA), United States Coast Guard (USCG), yacht clubs, Parks, DFW, PSP
Washington Department of Natural Resources (DNR)	January 9, 2013	Through phone conversation with Naki Stevens, ecology provided a brief overview on the NDZ evaluation and answered questions.	DNR
Cruise Line Association and Port of Seattle meeting	February 28, 2013	Ecology met with the Cruise Line Association and the Port of Seattle; provided a presentation, open discussion and answered questions on the NDZ evaluation project.	Cruise Lines Association, Port of Seattle
Washington Boating Alliance meeting, Bellevue	March 4, 2013	WBA requested a meeting with ecology to openly discuss the NDZ evaluation and options.	Recreational boaters/WBA
Email sent to approximately fifty tribal stakeholders	February 13, 2013	Ecology sent email to approximately fifty tribal contacts to provide a summary of the evaluation, a link to our web site and a request for input. Emails sent through Tom Laurie.	Tribal
Email sent to approximately three hundred stakeholders	February 21, 2013	Ecology sent email out to approximately three hundred stakeholder groups/associations/entities and individuals to provide a summary of the evaluation, a link to our web site and a request for input. Received numerous emails and letters from interested parties.	All
Outreach letters in response to questions and comments from stakeholders.	2012-2013	Ecology received phone calls and emails from interested stakeholders. Sent responses to letters to Shilshole Liveaboard Association, WBA, WA Ports Association, RBAW and NYBA.	All
Northwest Marine Trade Association (NMTA) meeting	April 4, 2013	Ecology met with NMTA to discuss the NDZ evaluation project, engage in open discussion and answer questions.	Recreational boaters/NMTA
Washington Liveaboard Association (WLA) meeting	April 4, 2013	Ecology met with WLA to discuss the NDZ evaluation project, engage in open discussion and answer questions.	Recreational boaters/WLA
Recreational Boaters Association of Washington (RBAW) meeting	May 9, 2013	Ecology met with RBAW to discuss the NDZ evaluation project, engage in open discussion and answer questions.	Recreational boaters/RBAW
Ecology's NDZ Advisory Group meeting	June 20, 2013	This was the first of two advisory group meetings that included various stakeholders.	All (see attendee list)
Ecology's NDZ Advisory Group meeting	July 11, 2013	This was the second of two advisory group meeting[s] that included various stakeholders.	All (see attendee list)
Tug and Barge industry meeting	August 13, 2013	Ecology met with a group of tug and barge industry representatives to discuss the details of sewage management on the various tug and barge vessels and the NDZ.	Tug and Barge industry, Port of Seattle
Puget Sound Partnership Ecosystem Coordination Board	September 19, 2013	Ecology provided a briefing on the NDZ evaluation project and answered questions.	PSP
Email sent to approximately fifty tribal stakeholders	November 7, 2013	Ecology sent email to approximately fifty tribal contacts to provide a summary of the evaluation, a link to our web site and a request for input. Emails sent through Tom Laurie.	Tribal
NW Marina & Boatyard Conference	November 8, 2013	Ecology provided a presentation on the NDZ and answered questions.	Marinas, boatyards, recreational boaters

Outreach Activity	Date	Description	Attendees/Audience
Boater Safety Checks and Boarding discussion, WBA and agencies	November 20, 2013	Ecology took part in a discussion requested by WBA on inspections and boardings by the various agencies.	USCG, DFW, local sheriffs, WBA, others
RBAW annual meeting	November 23, 2013	Ecology provided a presentation on the NDZ and answered questions.	Recreational boaters/RBAW
Tug and other vessel operator meeting at the North Pacific Fishing Vessel Owner's Association (NPFVOA) building	November 25, 2013	Ecology provided a presentation on the NDZ and answered questions.	More than sixty mostly commercial (tugs, fishing, small passenger vessel) and some recreational vessel operators
United States Environmental Protection Agency (EPA)	Ongoing	Ecology has included EPA since the beginning of the evaluation process and provides regular updates.	EPA
Ecology's NDZ web site	Ongoing	Ecology's NDZ web site has been online since August 2012 and has been updated regularly. The web site has the following information: Background on NDZs; relevant reports; a summary of the process; status updates; links to related sites; and contact information for questions or comments.	All
Puget Sound Partnership (PSP) Leadership Council	December 12, 2013	Ecology provided a briefing on the NDZ evaluation project and answered questions.	PSP, environmental groups
Small passenger vessel site visit and meeting	January 9, 2014	Ecology toured two vessels and met with two companies (Un-Cruise and Linblad Expeditions) along with a naval architect. Discussed logistics of sewage management, etc.	Small passenger vessel industry
NDZ Marine Alliance, Director Mellon meeting	February 3, 2014	Discussed the concerns from the NDZ Marine Alliance on the NDZ.	NDZ Marine Alliance (RBAW, American Waterworks Operators (AWO), fishing industry, NMTA, small cruise industry)
Cherry Point Aquatic Reserve meeting	February 18, 2014	Ecology provided a presentation on the NDZ and answered questions.	Aquatic reserve committees, boaters, general public
NDZ Marine Alliance meeting	March 11, 2014	Discussion on NDZ concerns with the NDZ Marine Alliance.	NDZ Marine Alliance (RBAW, AWO, fishing industry, NMTA, small cruise industry)
Schooner Adventuress	March 17, 2014	Discussion on NDZ with Schooner Adventuress (Living Boat Foundation concept).	Schooner Adventuress
Seattle Yacht Club	May 29, 2014	Ecology provided a presentation on the NDZ and answered questions.	Recreational boaters
Washington Boating Alliance meeting	June 12, 2014	Ecology provided a brief on the NDZ and answered questions.	Recreational boaters/WBA
American Waterworks Operators meeting (and others) at FOSS	August 25, 2014	NDZ status update and discussion on concerns, costs, and pumpouts.	Tug and barge industry, and other vessel operators (small passenger vessels, rec, etc.)
Shellfish stakeholders meeting	September 4, 2014	NDZ status update, general feedback discussion and answered questions.	Shellfish industry
Pacific Coast Shellfish Growers Association (PCGSA) annual conference	September 25, 2014	Ecology provided a brief on the NDZ and answered questions.	Shellfish industry
House committee work session	September 29, 2014	Ecology provided a brief on the NDZ and answered questions.	House committee and interested parties
Small passenger vessel meeting	October 6, 2014	NDZ status update and discussion on concerns and costs.	Small passenger vessel industry
American Waterworks Operators meeting (and others) at Harley Marine Services	January 15, 2015	NDZ status update and discussion on costs, and pumpouts.	Tug and barge industry
Puget Soundkeeper Alliance	March 9, 2015	Ecology met with Puget Soundkeeper Alliance to provide a status update and answer questions.	NGO
Cruise Line Association International North West & Canada and Port of Seattle meeting	March 12, 2015	Ecology provided a status update and answered questions on the NDZ evaluation project.	Cruise Lines/Association, Port of Seattle
Washington Boating Alliance (WBA) meeting	April 9, 2015	Provided a brief update on the NDZ.	Recreational boaters/WBA

Outreach Activity	Date	Description	Attendees/Audience
American Waterworks Operators call with Herrera Environmental Consultants, Inc.	May 7, 2015	Led a call to coordinate technical information to Herrera for work done on studying cost impacts.	Tug and barge industry
Washington Boating Alliance (WBA) meeting	November 12, 2015	Presented an update on the NDZ.	Recreational boaters/WBA
NDZ implementation planning meeting	December 3, 2015	Review of draft implementation plan and planning meeting.	State agencies, environmental groups, and other implementation partners
Ecosystem Coordination Board meeting	January 14, 2016	Provided NDZ status update and answered questions.	Board members
NDZ Marine Alliance representatives meeting	February 1, 2016	Provided an update on modeling results and recent studies.	Tug and barge industry, cruise ships, recreational boaters, NDZ Marine Alliance
NDZ Marine Alliance meeting	February 23, 2016	Update and discussion on modeling results and the NDZ.	Tug and Barge industry, NDZ Marine Alliance representatives, Governor's Office
NDZ Marine Alliance representatives meeting	March 3, 2016	Discussion on modeling results.	Tug and Barge industry, cruise ships
Cruise Lines and Port of Seattle meeting	April 5, 2016	Ecology met with the Cruise Line International Association North West & Canada and the Port of Seattle; provided a status update and answered questions on the NDZ.	Cruise Lines/Association, Port of Seattle
WDFW briefing	April 7, 2016	Provided a briefing on the NDZ and answered questions.	State agencies
Salish Sea Conference	April 13, 2016	Provided a presentation on the NDZ and modeling work.	Various
American Petroleum Institute	June 14, 2016	Provided a briefing on the NDZ and answered questions.	Oil tanker companies and tug and barge industry
NDZ Marine Alliance representatives meeting	July 19, 2016	Discussion on status of NDZ, implementation challenges and long-term infrastructure planning.	Tug and Barge industry, NDZ Marine Alliance representatives, governor's office
Northwest Straits Commission	August 26, 2016	Provided a briefing on the NDZ and answered questions.	NW Straits Commission members
United States Coast Guard (USCG) meeting	December 20, 2016	Discussion on potential NDZ implementation.	USCG
Various phone calls	Ongoing	Various calls with stakeholders to either answer questions or brief with an update or discussion.	Various

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:** The proposed rule is likely to impact North American Industry Classification System (NAICS) codes:

- 1141 - Fishing (includes shellfish industry)
- 4831 - Deep Sea, Coastal, and Great Lakes Water Transportation
- 4872 - Scenic and Sightseeing Transportation, Water
- 4883 - Support Activities for Water Transportation

**IMPACT ON JOBS:** Ecology used the Washington state office of financial management's (OFM) 2007 Washington Input-Output Models to estimate the impact of the proposed rule on jobs in the state. The model accounts for interindustry impacts and spending multipliers of earned income and changes in output.

<sup>5</sup>See OFM's site for more information on the input-output model. <http://www.ofm.wa.gov/economy/io/2007/default.asp>.

The proposed rule will result in transfers of money within and between industries. Because pumpouts and dump stations could be public or private, we conservatively

assumed that those expenditures were made at public facilities, which does not result in additional jobs or spending in the OFM model (the model does not include a public sector). It was also not possible to confidently assume what proportion of retrofit expenditures would stay in state. This means job losses are overestimated, and net impacts to jobs would likely be smaller due to some types of expenditure staying in the state and funding positions such as public or private pumpout facility staff.

Under the low cost assumptions, the Washington state economy could experience a net loss of two hundred fourteen full-time employees (FTEs) over twenty years, across all private industries in the state. Most losses would be within the most impacted industry, of sixty-two FTEs in shipping and transportation support industries.

Under the high cost assumptions, the Washington state economy could experience a net loss of two hundred forty-two FTEs over twenty years, across all industries in the state. Similarly to the estimate under low-cost assumptions, most losses would be within the most impacted industry, of sixty-two FTEs in shipping and transportation. The higher total job

losses stem from higher estimated costs for commercial fishing.

These prospective changes in overall employment in the state are the sum of multiple small increases and decreases across all industries in the state. These estimates include only the impacts of compliance cost expenditures, and do not include potential job growth from increases in harvestable shellfish acreage.

A copy of the statement may be obtained by contacting Kasia Patora, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-407-6184, TTY 877-833-6341, email kasia.patora@ecy.wa.gov.

October 4, 2017  
Heather R. Bartlett  
Water Quality  
Program Manager

### Chapter 173-228 WAC

#### VESSEL SEWAGE NO DISCHARGE ZONES

##### NEW SECTION

**WAC 173-228-010 Purpose.** The purpose of this chapter is to establish no discharge zones for vessel sewage.

##### NEW SECTION

**WAC 173-228-020 Definitions.** For purposes of this chapter, the following definitions are applicable:

(1) "**Commercial fishing vessels**" means any vessel which is documented under the laws of the United States or, if under five net tons, registered under the laws of any state, and used for commercial fishing or activities directly related to commercial fishing.

(2) "**National Oceanic and Atmospheric Administration (NOAA) research and survey vessels**" means NOAA vessels used for research and survey purposes.

(3) "**No Discharge Zone**" means an area where federal approval has been received to allow a state to completely prohibit the discharge from all vessels of any sewage whether treated or untreated.

(4) "**Public vessels**" means a vessel owned or bareboat chartered and operated by the United States, by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(5) "**Small commercial passenger vessels**," also referred to as "small cruise ships" are commercial passenger vessels that provide overnight accommodations for less than two hundred forty-nine overnight passengers for hire, determined with reference to the number of lower berths.

(6) "**Sewage**," also known as blackwater, means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

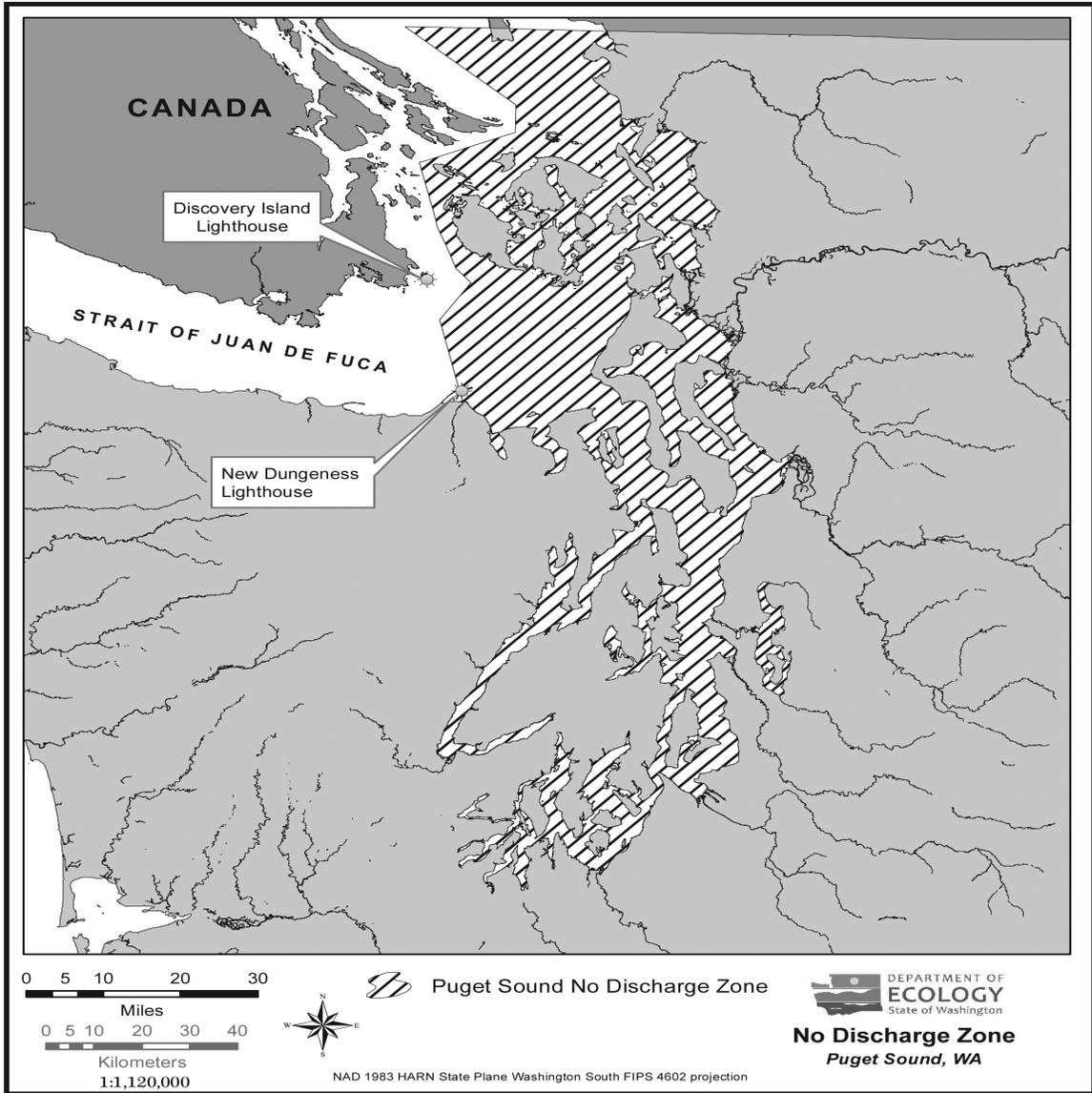
(7) "**Tug boats**," "**towing vessel**" or "**tugboat**" is a commercial vessel that is engaged in or intending to engage in pulling, pushing, hauling alongside, or a combination thereof.

##### NEW SECTION

#### **WAC 173-228-030 Designated no discharge zones.**

The following are designated no discharge zones where all sewage, whether treated or not, from all vessels is prohibited:

**Puget Sound No Discharge Zone:** All the marine waters of Washington state inward from the line between New Dungeness Lighthouse (N 48°10'54.454", 123°06'37.004" W) and the Discovery Island Lighthouse (N 48°25'26.456", 123°13'29.554" W) to the Canadian border (intersecting at: N 48°20'05.782", 123°11'58.636" W), and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.



**NEW SECTION**

**WAC 173-228-040 Vessel sewage management in no discharge zones.** Vessel sewage must be managed in no discharge zones.

(1) Vessels with installed and operable toilets must have a Type III marine sanitation device to allow for complete and adequate sewage holding capacity while in a no discharge zone.

(2) Vessels with marine sanitation devices must secure the devices to prohibit the discharge of sewage per 33 C.F.R. 159.7 while in no discharge zone waters.

(3) Vessels without installed toilets must dispose of any collected sewage from portable toilets or other containment devices at facilities in a manner that complies with state law.

**NEW SECTION**

**WAC 173-228-050 Effective.** The Puget Sound No Discharge Zone applies to all vessels on the effective date of this rule except for:

(1) Tug boats, commercial fishing vessels, small commercial passenger vessels, and National Oceanic and Atmospheric Administration (NOAA) research and survey vessels, which have a delayed implementation lasting five years from the effective date for this rule in the Puget Sound No Discharge Zone. The vessels would still be required to comply with existing state and federal discharge regulations in the interim.

(2) Public vessels actively involved in emergency, safety, security, or related contingency operations where it would not be possible to comply with the no discharge zone.

NEW SECTION

**WAC 173-228-060 Enforcement.** Ecology may enforce this chapter by using any of the enforcement provisions in chapter 90.48 RCW. In addition, other federal, state and local agencies may provide enforcement, as authorized.

**WSR 17-20-111  
PROPOSED RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed October 4, 2017, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-119.

Title of Rule and Other Identifying Information: WAC 170-290-0190 WCCC authorized additional payments—Determining units of care.

Hearing Location(s): On November 7, 2017, at 10:30 a.m., at 1110 Jefferson Street S.E., Room 113, Olympia, WA. Request to participate by phone by contacting the rules coordinator at rules@del.wa.gov or 360-725-4670, on or before November 3, 2017.

Date of Intended Adoption: November 9, 2017.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, email rules@del.wa.gov, fax 360-725-4925, by November 8, 2017.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-725-4670, fax 360-725-4925, email rules@del.wa.gov, by November 3, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 170-290-0190 are filed in conjunction with proposed amendments to chapter 170-290 WAC filed under WSR 17-19-120. Proposals impact working connections and seasonal child care subsidy program applicants and consumers. Specifically, the proposals will (1) require applicants to disclose household composition and name and address of the other parent when known unless the applicant has good cause not to cooperate; (2) clarify how the department of social and health [services] (DSHS) determines family size when determining authorization amounts; (3) standardize authorization amounts for all participating families who need full- and part-time care and are using licensed child care providers or license-exempt/relative (family, friend, or neighbor) providers; (4) disallow child care from occurring in the child's home when the parent/guardian is self-employed and operating a home-based business; (5) clarify when work schedule information and third-party verification may be required for income verification; (6) clarify the deadline by which an applicant must respond to a request for income verification; and (7) specify acceptable forms of documentation for verification of an applicant's participation in qualifying activities and timelines for submission.

Reasons Supporting Proposal: The proposals strengthen internal controls for administering the working connections and seasonal child care subsidy programs and promote program integrity by (1) requiring questionable applicant state-

ments of household composition to be supported by additional third-party verification; and (2) simplifying the DSHS' process for requesting and documentation to verify applicants and consumers are participating in qualifying activities. The proposals remove barriers from program participation by (1) providing flexibility in income calculation and verification and allowing the use of documentation that most accurately reflects the consumer's economic situation; and (2) standardizing the authorization amounts for all families including those with parents participating in approved activities full- and part-time for traditional, nontraditional, and variable working schedules and for school-age and nonschool-age children across all provider types.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: RCW 43.215.135, chapter 43.215 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of early learning (DEL), governmental.

Name of Agency Personnel Responsible for Drafting: Cindy McCloskey, Subsidy Policy Analyst, DEL State Office, P.O. Box 40970, Olympia, WA 98504, 360-725-4430; Implementation and Enforcement: DEL/DSHS, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328 (5)(a)(i). Further, DEL does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

October 4, 2017

Heather Moss

Director

AMENDATORY SECTION (Amending WSR 17-18-009, filed 8/24/17, effective 9/24/17)

**WAC 170-290-0190 WCCC (~~authorized and additional payments—Determining units of care~~) benefit calculations.** ~~((1) DSHS will authorize the following:~~

~~(a) Full day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;~~

~~(b) Half day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;~~

~~(c) Hourly child care for in-home/relative child care;~~

~~(d) Full time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full time care means the following:~~

(i) For licensed care or certified facilities, twenty-three full-day units if the child needs five or more hours of care per day, or thirty half-day units if the child needs fewer than five hours of care per day; and

(ii) Two hundred thirty hours for in-home/relative child care if the child needs five or more hours of care per day or one hundred fifteen hours for in-home/relative child care if the child needs fewer than five hours of care per day. Supervisor approval is required for DSHS to authorize more than two hundred thirty hours of in-home/relative child care in a calendar month for a single child.

(e) A registration fee (under WAC 170-290-0245);

(f) A field trip fee (under WAC 170-290-0247);

(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(h) A nonstandard hours bonus under WAC 170-290-0249.

(2) Beginning September 1, 2016, and applicable to school-age children, DSHS will authorize and pay for child care as follows:

(a) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care;

(b) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year until the following June. If the consumer's schedule has changed and more care is needed, the consumer must request an increase, and DSHS will verify the need for increased care. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025; and

(c) Beginning October 1, 2017, DSHS will authorize one hundred fifteen hours of child care for the in-home/relative provider and DSHS will authorize additional contingency hours of care needed for the school-aged child by the in-home/relative provider when the child needs full-time care. Contingency hours will have a variable monthly limit and be available for each month of the calendar year. Supervisor approval is required when a school-aged child needs more than two hundred thirty hours of in-home/relative child care a month.

(3) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

(4) DSHS authorizes overtime care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

(5) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.) (1) The amount of care a consumer may receive is determined by DSHS at application or reapplication. The consumer does not need to be in approved activities or a reported activity schedule, except at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

(a) The consumer requests the reduction;

(b) The care is for a school-aged child as described in subsection (3) of this section; and

(c) Incorrect information was given at application or reapplication according to WAC 170-290-0030.

(2) To determine the amount of weekly hours of care needed, DSHS will review:

(a) The consumer's participation in approved activities per WAC 170-290-0040, 170-290-0045, 170-290-0050, and 170-290-0055;

(b) The number of hours the child attends school, including home school, and reduce the amount of care;

(c) The overlap activity hours in a two parent household and reduce the amount of care of nonoverlapped activity hours;

(d) The parent, in a two parent household, who is not able to care for the child, as defined in WAC 170-290-0020, and exclude the activity requirements; and

(e) When a consumer requests and verifies the need for increased care, DSHS will increase the care for the remainder of the eligibility period.

(3) **Determining full-time care for a family using licensed providers:**

(a) Twenty-three full-day units per month will be authorized for one hundred ten hours of activity or more each month when the child needs care five or more hours per day;

(b) Thirty half-day units per month will be authorized for one hundred ten hours of activity or more each month when the child needs care less than five hours per day;

(c) Thirty half-day units per month will be authorized during the school year for a school-aged child who needs care less than five hours per day;

(d) Forty-six half-day units will be authorized during the months of July and August for a school-aged child who needs five or more hours of care;

(e) Twenty-three full-day units will be authorized during the school year for a school-aged child who needs care five or more hours per day;

(f) Supervisor approval is required for additional days of care that exceeds twenty-three full days or thirty half days; and

(g) Care cannot exceed sixteen hours per day, per child.

(4) **Determining full-time care for a family using in-home/relative providers (family, friend and neighbors).**

(a) Two hundred thirty hours of care will be authorized for one hundred ten hours of activity or more each month when the child needs care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized for one hundred ten hours of activity or more each month when the child needs care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who needs care less than five hours per day and the provider will be authorized contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who needs care five or more hours in a day;

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours; and

(f) Care cannot exceed sixteen hours per day, per child.

**(5) Determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month.**

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

**(6) Determining part-time care for a family using in-home/relative providers (family, friend and neighbors).**

(a) Under the provisions of subsection (2) of this section, DSHS will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) When the provider claims contingency hours, the total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

(7) DSHS determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

(8) DSHS may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

(9) Other fees DSHS may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider who has a written policy to charge all families, when care provided exceeds ten hours in a day; and

(e) Special needs rates for a child.

(10) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.